

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

ADRIAN DUNN, )  
)  
Plaintiff, ) No. 16-CV-00493-BCW  
) July 18, 2017  
v. ) Kansas City, Missouri  
) CIVIL  
UNITED STATES OF AMERICA, )  
)  
Defendant. )

TRANSCRIPT OF EVIDENTIARY HEARING  
BEFORE THE HONORABLE BRIAN C. WIMES  
UNITED STATES DISTRICT JUDGE

Proceedings recorded by electronic voice writing  
Transcript produced by computer

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1                                July 18, 2017

2                                (Proceedings began at 9:00 AM)

3                                THE COURT: Good morning, counsel. Let the Court  
4 call the case. This Adrian Dunn versus United States of  
5 America. Case No. 16-CV-00493. Can I have parties enter  
6 their appearance for the record?

7                                MR. DWERLKOTTE: Good morning, Your Honor. Brent  
8 Dwerlkotte from Shook Hardy on behalf of Mr. Dunn. Along with  
9 partner from Shook Hardy, Andy Carpenter, head of our  
10 appellate group. And also with us is Anna El-Zein who is a  
11 law student from the University of Missouri.

12                               THE COURT: Okay. Great. Good morning.

13                               MR. BOHLING: Good morning, Your Honor. James  
14 Bohling for the United States. Joining me at counsel table is  
15 Philip Hiscock. Phil is an ATC attorney with customs and  
16 border protection in Chicago, Illinois. And also my paralegal  
17 Erica Curp.

18                               THE COURT: Okay. Good morning.

19                               Well, let me start here. I know there was some  
20 filings that occurred. I was out last week and there was some  
21 filings. Did you want to take up any preliminary issues?

22                               MR. DWERLKOTTE: Your Honor, if I may?

23                               THE COURT: Yes.

24                               MR. DWERLKOTTE: Permission to approach the podium?

25                               THE COURT: Please.

1 MR. DWERLKOTTE: This case is fairly complex so if I  
2 could have just a couple minutes?

3 THE COURT: Sure.

4 MR. DWERLKOTTE: I think it might help explain a few  
5 things.

6 We are here today, Your Honor, whether Mr. Dunn is  
7 entitled to return of property that was seized from him over  
8 eight years ago. If this thing will work here. Probably not.  
9 Okay.

10 Last week, Your Honor, it became -- my apologizes.  
11 We will figure this out here. Just one moment.

12 THE COURT: Okay. And my apologizes. Are you all  
13 hearing that? I'm not quite sure what that is.

14 MR. DWERLKOTTE: That's what messed up my  
15 PowerPoint.

16 THE COURT: Is that right? I'll go with that.

17 MR. DWERLKOTTE: There we go.

18 THE COURT: Okay. We'll be fine, Joella. We'll  
19 just push through. Okay. Mr. Dwerlkotte.

20 MR. DWERLKOTTE: Sorry about that, Your Honor.

21 Last week we got the impression that we were going  
22 to see a lot of testimony and evidence at least in our opinion  
23 was inadmissible for a couple reasons. And in the filing  
24 yesterday we see that the government intends to rely on quote,  
25 unquote, reliable hearsay, to attempt to meet its burden in

1 this case today. The government --

2 THE COURT: -- what is the burden? Is that a  
3 preponderance?

4 MR. DWERLKOTTE: I would argue, yes, Your Honor,  
5 under CAFRA I think it is preponderance of the evidence. The  
6 government bears that burden. We'll kind of circle back  
7 around to that if that is okay with you?

8 THE COURT: Sure.

9 MR. DWERLKOTTE: What the time government hasn't  
10 told you that most of the evidence that they are going to rely  
11 on is testimony and other statements that were made by  
12 criminal defendants in the underlying criminal case,  
13 particularly Mr. Corredor who was the main subject of the  
14 criminal case and who eventually pled in return for the  
15 government taking the death penalty off the table for some  
16 murders that he was involved in. So that is the evidence that  
17 we think that they are trying to bring in here. But I think  
18 it is also important to kind of understand why we are here  
19 today, that we have to see where we came from. It's kind of  
20 long winding history so I'll try to explain that very briefly.

21 Mr. Dunn had his property seized in 2009, June of  
22 2009. More specifically, he had a 1974 Caprice, a 2005  
23 Corvette, and \$41,000 that was located in the trunk of the  
24 1974 Caprice. Now, to complicate matters there were -- the  
25 Caprice and the \$41,000 -- I have a little demonstrative that

1 I think kind of helps me at least, identify the property and  
2 where it was seized from. So the \$41,000 and Caprice were  
3 located at 8717 Kentucky address. While the 2005 Corvette was  
4 located at the 98<sup>th</sup> Street address. And red there is the  
5 items that we are here about today, Your Honor.

6 So after the property was seized the administrative  
7 agency begins the process of sending out administrative  
8 notices for forfeiture. In the meantime the government files  
9 a superseding indictment of August of 2009 that includes the  
10 same property that we are here today about. The Corvette, in  
11 the underlying case which is 9-188. So this is August 20<sup>th</sup>,  
12 of 2009. Mr. Dunn makes a series of filings that the  
13 government has conceded should have been construed as claims  
14 in the administrative process, but were not. Typically, the  
15 way that that is handled, if a claim is made it gets referred  
16 to the US attorney's office, who then is responsible for  
17 filing a -- including the property in an indictment or  
18 initiating civil forfeiture proceedings rather than  
19 administrative forfeiture proceedings. So Mr. Dunn makes  
20 those filings. They sell the Corvette in 2009.

21 THE COURT: Whose they?

22 MR. DWERLKOTTE: Well, Homeland Security, CBC.

23 THE COURT: Oh, government.

24 MR. DWERLKOTTE: Yes. If it's okay, I'll just use  
25 the word government?

1 THE COURT: Sure.

2 MR. DWERLKOTTE: This chart may help a little bit  
3 too. I have a binder up there for Your Honor, as well. It is  
4 Demonstrative Exhibit No. 1 in case you have any questions  
5 about it.

6 So they sell the Corvette. In December of 2009, the  
7 criminal case goes to trial with Mr. Dunn and several other  
8 codefendants. In February of 2011, Judge Laughrey tried the  
9 case. It goes on for a series of about a week and the net  
10 result is that Mr. Dunn and others are found guilty of a  
11 conspiracy to distribute cocaine and were sentenced  
12 thereafter.

13 Importantly, Your Honor, the government did not  
14 include that property that was included in the indictment as  
15 part of the criminal case. So the Jury didn't make that  
16 determination. After that, the government then realizes they  
17 didn't that in the criminal case and initiates the declaration  
18 of forfeiture in the administrative process and sells the  
19 Caprice.

20 So following that Mr. Dunn files a motion to vacate  
21 under 983(e) which is essentially what they did here. But it  
22 was in the criminal case and it should have been a civil case.  
23 Now we are here today under 983(e) for -- well, at least this  
24 case is here, Your Honor, by virtue of 983(e) which allows the  
25 Court to set aside its civil forfeiture, which includes either



1 judicial forfeiture or administrative forfeiture.

2           The government in its brief had conceded that the  
3 forfeiture itself was wrong, but nonetheless, wanted to  
4 contest the right of Mr. Dunn to the return of his property on  
5 the theory that it was traceable or were proceeds from the  
6 drug trafficking for the underlying --

7           THE COURT: -- let me stop because this is going to  
8 help me out. How would we normally do this? I think I have  
9 an idea in my mind how we normally do. We've got criminal  
10 case files, simultaneously filed a motion, a preliminary  
11 forfeiture, is that how? And then what happens -- and correct  
12 me if I'm wrong. And then we go plead guilty, found guilty  
13 then we ask for finalization of the preliminary order of  
14 forfeiture or we do that at the sentencing. How is the normal  
15 process?

16           MR. BOHLING: That would be a normal process. I  
17 would just amend that to say that it is not uncommon for an  
18 agency to start an administrative proceeding and have that  
19 open during the pendency of a criminal case.

20           THE COURT: Okay.

21           MR. BOHLING: And it is also not uncommon for us to  
22 abandon the criminal forfeiture proceedings. It's really  
23 improper for us to forfeit it twice. So in the normal course  
24 of events you would see that in some cases, we will ask the  
25 Court not to complete the criminal forfeiture because the

1 agency has completed an administrative forfeiture. That's  
2 what we believed had happened here.

3 THE COURT: Who determines an administrative  
4 forfeiture from a criminal forfeiture? What is the rational?

5 MR. BOHLING: One is a civil proceeding. An  
6 administrative forfeiture is a considered to be a civil  
7 forfeiture proceeding. As the Court knows we sometimes file  
8 civil judicial cases that are parallel to our criminal cases.  
9 Actually we do that quite commonly now. So they are actually  
10 two different tracks. And the administrative case is often  
11 started first. And it would be unclear to us, without getting  
12 into details, there are so differences between the two  
13 processes that we might determine. So administrative is  
14 certainly more efficient. So if no one files a claim in a  
15 timely way in the administrated process, it is essential done.  
16 And so we don't have to then spend the Court's own resources  
17 on criminal forfeiture if the item is already forfeited. And  
18 so that's what we thought had happened here and obviously,  
19 later, as Brent has pointed out, we later, many years later  
20 determined that it had not been properly done.

21 THE COURT: Okay. Mr. Dwerlkotte.

22 MR. DWERLKOTTE: So the government, as Curt just  
23 pointed out, notes that the administrative forfeiture should  
24 be set aside. And the only way that it would be proper to do  
25 that is under 983(e). I've provided a copy to your law clerk

1 and to you as well, Your Honor. I think we all agree on that.  
2 Normally, that's a provision under CAFRA, which is the Civil  
3 Asset Forfeiture Reform Act. I'm gonna call it CAFRA. The  
4 government here requested a Rule 41 type hearing. So a couple  
5 reasons why we do not believe that Rule 41 applies. The most  
6 logical reason is we didn't file a Rule 41 motion. Mr. Dunn  
7 has not invoked Rule 41 yet, so we don't think that the  
8 procedures for Rule 41 should apply here.

9 Secondly, Your Honor, Rule 41 is essentially allows  
10 the Court to act -- exercise jurisdiction and exercise equity  
11 and only in exceptional circumstances. Plenty of case law,  
12 that I can provide Your Honor a copy if you would like, tells  
13 us that Rule 41 is not the proper mechanism to set aside or to  
14 deal with property that has been seized through a civil  
15 forfeiture but rather it is through CAFRA.

16 Third, we know Rule 41 only applies to the return of  
17 property. Well, we know that the government has sold the  
18 Caprice and has also sold the 2005 Corvette. So there is  
19 nothing for them to return to us. So Rule 41 wouldn't really  
20 get us anywhere because they can't give it back to anyway. I  
21 don't know about the money, I presume that they still have  
22 money somewhere. But that hasn't been addressed. So Rule 41  
23 doesn't help us out there so it shouldn't apply. And even if  
24 Rule 41 did apply, Your Honor, I'm not aware of any case law  
25 saying that the rules of evidence would not still apply and

1 the proceeding, such that inadmissible hearsay and other  
2 evidence should only come in subject to the Court finding that  
3 it meets the admissible standard. I would also point out,  
4 Your Honor, I have an Eighth Circuit case, Jackson versus  
5 United States, 526 F3d 394. This kinda frames the background  
6 of why, how we got here. If I may approach, Your Honor?

7 THE COURT: You may.

8 MR. DWERLKOTTE: So typically if there is a Rule 41  
9 hearing initiated after the criminal case, we provide the case  
10 law in our trial memorandum where it talks about the burden  
11 shifting to the government and it is a higher burden. But  
12 also the Jackson V. US case, talks about a Rule 41(g) motion  
13 is properly denied if the defendant is not entitled to  
14 unlawful possession of seized property. The property is  
15 contraband or subject to forfeiture or the government's need  
16 for the property as evidence continues. Here the only  
17 provision of that that applies to this case would be subject  
18 to forfeiture. The only way the property can be subject to  
19 forfeiture is through administrative forfeiture or civil  
20 forfeiture which leads us back to CAFRA.

21 So the government wants to prove that its proceeds  
22 are traceable to drug trafficking they have to do that through  
23 CAFRA, despite the fact that they have asked for a Rule 41  
24 type hearing here today.

25 THE COURT: Let me make sure I'm following. So

1 you're saying they can't do it through Rule 41?

2 MR. DWERLKOTTE: Yes.

3 THE COURT: Connect that for me because I'm not --

4 MR. DWERLKOTTE: -- sure.

5 So Rule 41 wouldn't apply yet. I think there is  
6 Eighth Circuit precedent that tells us that if an  
7 administrative forfeiture is set aside as void or is  
8 ineffective, the Court should order the government to either  
9 return the property or initiate civil proceedings. That is  
10 also in our trial brief. US Volanty. So we know that that is  
11 the procedure that should be followed.

12 The only way Rule 41 would apply as if the  
13 government did not file a civil forfeiture action or a  
14 judicial -- I'm saying civil forfeiture meaning they would  
15 have to file in federal court. Would be if they didn't do  
16 that, we would have no other remedy but to ask the Court for  
17 the return of property in that sense. But it doesn't apply  
18 here yet, Your Honor, because the Eighth Circuit tells us what  
19 the normal procedure would be in this circumstance.

20 Finally, I will get to what is CAFRA? CAFRA, I have  
21 an evidentiary brief as well as trial brief that kind of gives  
22 some background on this. But in 2000, Congress enacted CAFRA  
23 in order to consolidate and dramatically overhaul the  
24 procedures for civil judicial forfeiture proceedings. One of  
25 the main things they did, Your Honor, was require the

1 government by a preponderance of the evidence standard to show  
2 that the property is subject to forfeiture.

3           Importantly as well, Your Honor, we have cited cases  
4 from the only Circuit Court that has determined the issue, as  
5 well as other circuit courts around the country, as well as  
6 some in the Eighth Circuit that have found that the rules of  
7 evidence apply to CAFRA cases. And I'm going to let -- Andy  
8 will handle more of the admissibility arguments that we have.  
9 But I wanted to point out that the rules of evidence certainly  
10 apply under CAFRA, and that was one of the major reasons for  
11 the enactment of CAFRA in the first place.

12           So for that reason, Your Honor, we would ask that --  
13 we go through this hearing today, we apply the normal rules of  
14 evidence, and we will see how it plays out.

15           THE COURT: Okay. Mr. Bohling, would you like to  
16 respond?

17           MR. BOHLING: I would, yes.

18           Your Honor, this is indeed a complex and fascinating  
19 case, and I actually agree with counsel on many points, but  
20 there are some where we diverged, and I would like to explain  
21 those differences.

22           As counsel has noted the agency, Customs and Border  
23 Protections, started administrative forfeiture proceedings  
24 back when this case was in process which would be about 2009,  
25 going through to 2011. And they did enter final orders of

1 administrative forfeiture as to the three assets in question.  
2 The \$41,000, the Corvette, and the Caprice. Mr. Dunn, has  
3 made a series of filings over the years. Finally culminating  
4 in the one that I think was properly filed. After visiting  
5 with the agency and talking about we did indeed determine that  
6 the agency, that the -- what we call FP&F officer, the  
7 individual who is in charge of this, should have interpreted  
8 Mr. Dunn's filings with the agency as claims. And just for a  
9 little background on that. There are two different processes  
10 that go on here and that's why it gets a little confusing.  
11 There is a claim, which requires the agency to send the case  
12 over to my office for judicial forfeiture action potentially.  
13 And then there is something called a petition for omission,  
14 which is essentially the person asking the agency in its  
15 discretion to not forfeit the items. The FP&F officer  
16 interpreted Mr. Dunn's filings as a petition for omission,  
17 which they may have been, but they also to us should have been  
18 interpreted as a claim.

19 So that brings us to then the, the framework that we  
20 think applies to this case. And I think it is actually a  
21 three part framework. And I certainly agree with counsel that  
22 the first part of that is 18 U.S.C Section 983(e). That is  
23 the provision of CAFRA that allows for judicial review for  
24 administrative forfeiture, final administrative forfeiture  
25 actions. That provision does not allow for a substantive

1 appeal or a substantive look at what happened. It looks at  
2 the procedure. Usually that procedure has to do with  
3 noticing. And while there are some little noticing blips  
4 here, this primarily is not a noticing case. But as we point  
5 out in the briefs that we filed with the Court, a number of  
6 courts have broadened the scope of 983(e) to approve cases  
7 like this, where the agency misinterpreted essentially the  
8 filings of the claimant, here Mr. Dunn's filings, and have  
9 allowed 983 to apply essentially as a due process violations.  
10 And again, the government has conceded that this is an issue.  
11 That the administrative forfeiture should be undone by the  
12 Court. Now, we would note for the record, I don't believe  
13 that has happened yet. I don't think the Court has yet  
14 entered an order under 983 formally vacating the  
15 administrative forfeitures. But I'm sure it will at some  
16 point, an appropriate time during the proceedings giving our  
17 concession, but that does become an important point down the  
18 road.

19 So the next question is --

20 THE COURT: Okay. So that's good. Now, I'm kind of  
21 following this. Now, I've got an idea.

22 So let me ask you this, so ultimately the question  
23 -- and I don't know if this is right because ultimately the  
24 Court will vacate?

25 MR. BOHLING: Correct. I assume.



1 THE COURT: Now the question becomes --

2 MR. BOHLING: -- what happens?

3 THE COURT: What happens? Where do we go from here,  
4 what can we do from here, right?

5 MR. BOHLING: And there are different ways that this  
6 can go.

7 THE COURT: And I'll let you go, Mr. Dwerlkotte.

8 MR. BOHLING: Now, Mr. Dwerlkotte has given you a  
9 case that talks about filing a civil forfeiture action. And I  
10 agree that if we were in the statute of limitations that would  
11 be the way that this would go. That once the Court entered an  
12 order vacating the administrative forfeiture, that the law  
13 suggests that we have the right to file a civil forfeiture  
14 action at that juncture. The problem we have quite honestly,  
15 and we have told the Court and counsel, we are way outside the  
16 statue of limitations. These things happened in 2008 and  
17 2009, we're in 2017, it is a five year statute. So that  
18 obviously creates a barrier to us filing a new civil  
19 forfeiture proceeding. And I would say that was probably not  
20 an issue in the Eighth Circuit case that was cited to you. So  
21 I agree completely that if we were in the statute, that is  
22 absolutely the way to go. That is what the Eighth Circuit  
23 says, that is what most courts say is that we would file a  
24 civil forfeiture proceeding. And that would mean we would  
25 literally have to file a civil forfeiture complaint as I'm

1 sure the Court has seen us file many times. Which we could do  
2 in short order, that is not an issue, but it is an issue that  
3 is out of time. And so that did not seem to be the answer on  
4 these particular facts.

5 The next -- so the body of law that we are citing to  
6 the Court which is the United States versus Clymore, I think  
7 is the chief case. And then Clymore 2, and a number of other  
8 cases we have cited, suggest that in this situation where the  
9 administrated forfeiture has been vacated, and the statute of  
10 limitations on the civil forfeiture complaint is run, that is  
11 when Rule 41 becomes operative. Because essentially the  
12 government is holding the property, we don't have the right to  
13 file a civil forfeiture case because the statute has run, and  
14 now if the claimant wants the property back, in this case  
15 Mr. Dunn, Rule 41 is the only procedural mechanism out there.

16 Now, just to speak to why I asked for this hearing,  
17 it was really out of a sense of this has taken a very long  
18 time. And it would be fair to say that Mr. Dunn has filed  
19 Rule 41 motions. He's filed just about every motion that one  
20 can imagine. They just were out of sequence. And as the  
21 Court can see sequencing is very important in this. So he had  
22 filed Rule 41 motions in the past but the problem was they  
23 were premature because the items still remain forfeited. So  
24 he can't get them back while they are forfeited. But once the  
25 Court undoes the forfeiture, he certainly can ask for them

1 back. So the reason I asked for this hearing was really out  
2 of efficiency. It was because we have taken a very long time,  
3 I do have a sense of fairness about this, it was our mistake.  
4 I can see that. And so I was trying to get to the finish line  
5 a little faster, that is all. And really it is up to them as  
6 far as -- it could be that we wait for the Court to enter the  
7 order formally, and then we can announce to them that we are  
8 not going to file a civil forfeiture because we believe we are  
9 out of time to do so. They can file the Rule 41 and we can  
10 come back, but we are here so I'm certainly okay with going  
11 ahead with the hearing. I suspect that is their position as  
12 well. But I do think this has to be a Rule 41 hearing under  
13 the law and under the procedural posture of the case which is  
14 somewhat unique.

15 So under Rule 41 there is a line of cases that  
16 says -- with Clymore, there is a case called Penrey, which I  
17 think puts it very well, that says, when the property is used  
18 to commit the offense on which the defendant received his  
19 conviction, only an innocent owner or one agreed by the legal  
20 seizure may qualify for lawful possession of the property. So  
21 the law recognizes that there is an equitable element to Rule  
22 41. And while Mr. Dunn could request his property back, we do  
23 have a right to present evidence to the Court that that would  
24 not be equitable. And in this case our argument obviously is  
25 going be that Mr. Dunn has been convicted of a major drug

1 conspiracy and that these items were involved in that  
2 conspiracy.

3 Now, as to the evidence issue, I think that is an  
4 interesting issue. For the most part, I believe we will be  
5 able to provide the Court with non-hearsay competent evidence  
6 of the points we are trying to make. There is one item -- we  
7 did not bring Mr. Corredor here, that is absolutely true. So  
8 there is one item where I would propose to call a witness for  
9 a very short recitation of what Mr. Corredor said in a  
10 proffer. I would like to be allowed to make that as an offer  
11 of proof. And I have researched this Rule 41 issue, it is not  
12 clear to me that this issue has been resolved as to whether  
13 competent hearsay in a reliable hearsay evidence is  
14 admissible. But I think there is only one piece of evidence  
15 --

16 THE COURT: -- is that always the case though?

17 MR. BOHLING: In a motion hearing I think it would  
18 be. I mean, I think I have a good argument that that is true.  
19 And what I did see is that in many of the cases --

20 THE COURT: -- it goes to the essence of  
21 reliability. Isn't that why we have the hearsay rule?

22 MR. BOHLING: Right.

23 THE COURT: Because you want to make sure. And  
24 that's why we have these exceptions to the hearsay because of  
25 the reliability.

1 MR. BOHLING: Right.

2 THE COURT: So if arguably, I mean, I'm sure  
3 Mr. Dwerlkotte may object, but your argument would be --  
4 right?

5 MR. BOHLING: Right. And I do think I do have  
6 arguments for why this might be admissible in a regular  
7 contexts. But I believe that in for the most part we can  
8 avoid getting into that. And I'm not sure it's necessary that  
9 the Court -- I mean, I don't see a huge issue when looking at  
10 the trial transcript. I mean, it's the same party, it's  
11 subject to cross-examination. I think all those things are  
12 true. But I certainly think the Court can find its way to see  
13 our point without having to rely on such evidence. So I'm  
14 confident with that.

15 THE COURT: Okay.

16 MR. BOHLING: Now, there is a third part of this  
17 which is -- it gets very complicated and very interesting. As  
18 counsel pointed out the agency has sold the Corvette and sold  
19 the Caprice. And I agree with him that Rule 41 in the Eighth  
20 Circuit cannot reach those items. We no longer have them  
21 physically. So you can't return what you don't have. That's  
22 generally the law, that's certainly the law in the Eighth  
23 Circuit. So where do we go from here? The seminal case here  
24 in the Eighth Circuit and important case nationwide is a case  
25 call Hall. Which we have cited, it's 269 F.3d, 943. And in

1 Hall the Eighth Circuit said that Rule 41 does not -- is not  
2 itself a waiver of the government's sovereign immunity. So  
3 Rule 41 is not a way in which a Court can assess damages  
4 against the government in this situation, where the government  
5 has essentially converted the property. Rule 41 itself in the  
6 Eighth Circuit as it says does not fill the gap. What the  
7 Hall court said is that the District Court is entitled to  
8 treat the Rule 41 motion also as a civil motion for damages.  
9 And the reason that it is important frankly is because it gets  
10 away from statute of limitations issues that might actually  
11 exist here. So that is important. But it is incumbent upon  
12 Mr. Dunn -- well, let me go back a step. I think there are  
13 two parts to this analysis. One, is if the Court finds that  
14 we are not equitably entitled to return the cars, I think we  
15 are done. I think we don't have to worry about this damages  
16 issue. If the Court finds that as to one of both of the  
17 vehicles that we are -- would otherwise have to return them,  
18 then we get into this issue of okay, we can't return them, is  
19 there a civil cause of action for damages that is available?  
20 And I walked through what some of those might be. We would  
21 generally look to the Federal Tort Claims Act.

22 THE COURT: What?

23 MR. BOHLING: The Federal Tort Claims Act.

24 THE COURT: Okay.

25 MR. BOHLING: The other possibility that people use

1 is the Tucker Act. And if the Court has done that litigation,  
2 you will remember that there is what we call little and big  
3 Tucker Acts, less than \$10,000, more than \$10,000. If it is  
4 more than \$10,000 it has to go to the Court of claims. So  
5 this all gets very complicated in post. But it would be  
6 incumbent upon Mr. Dunn to identify a waiver of sovereign  
7 immunity and a theory of recovery to the Court before he can  
8 recover damages. I'm not saying it's impossible. These are  
9 excellent lawyers and they may well find that way to do it. I  
10 think can be difficult, but that is their burden and that is  
11 what has to happen. We are a long way from that point but  
12 that is the three parts.

13 Now 83 which we have conceded, Rule 41, which we are  
14 here to have the hearing on today, and then as to the cars  
15 since we all agree the cars have been sold and they are no  
16 longer available for return, an appropriate waiver of  
17 sovereign immunity and theory of recovery under federal law in  
18 order to get damages for the cars being sold.

19 THE COURT: And that would be only if --

20 MR. BOHLING: -- only if the Court finds that we  
21 have an obligation to return them.

22 THE COURT: Right.

23 MR. BOHLING: So that's -- a very interesting case.  
24 That's our view of it. And I appreciate counsel I think they  
25 have sought this out very well and I appreciate the

1 discussion.

2 THE COURT: Mr. Dwerlkotte, it looks like you wanted  
3 to say something. So I'll let you may be addressing what  
4 Mr. Bohling said.

5 MR. DWERLKOTTE: Absolutely, Your Honor.

6 So we've got three ways the government can properly  
7 seize and then subsequently forfeit property. Administrative,  
8 criminally, civilly. All three of those avenues we now know  
9 that they don't think that they can do.

10 THE COURT: There is no avenue to vacate.

11 MR. DWERLKOTTE: Right.

12 THE COURT: So we are at ground zero. Civilly you  
13 can't do because the statute has run, correct? Would you  
14 agree or no?

15 MR. DWERLKOTTE: I don't know, I don't know about  
16 that Your Honor. I haven't talked to my client, but I don't  
17 think that I would waive a statute of limitations argument  
18 before Your Honor today.

19 THE COURT: Right.

20 MR. DWERLKOTTE: For them to go file something. And  
21 we know that it wasn't forfeited as part of the criminal case.  
22 So it seems now, they're saying that Mr. Dunn now has the  
23 responsibility to file this Rule 41 motion to get it back when  
24 they have three ways that they can properly do this, and they  
25 didn't do it.



1           THE COURT: And so what do I do? So you're saying  
2 -- and that was part of your argument earlier. So they had  
3 three ways, and now they can't do any of the ways, is that  
4 what you are suggesting?

5           MR. DWERLKOTTE: Right. And so if they were to do  
6 the civil forfeiture, file the complaint --

7           THE COURT: -- they say they can't, the statute has  
8 run.

9           MR. DWERLKOTTE: They say they can't, then CAFRA  
10 would apply. They have the burden, they have to come in, they  
11 have to have admissible evidence and our biggest problem here,  
12 Your Honor, is not necessarily with Rule 41 applying or CAFRA,  
13 so long as the rules of evidence apply. Because what we think  
14 they have is a bunch of inadmissible testimony.

15          THE COURT: Mr. Bohling says he can avoid that. I  
16 don't know what he plans on putting on, but that's his  
17 argument.

18          MR. DWERLKOTTE: Absolutely. So I think that that's  
19 -- and Andy can speak more to -- I think they have submitted  
20 an exhibit lists and we have challenges to each of those items  
21 on various grounds and so we can address that. But I think  
22 that it would be improper to shift the burden to Mr. Dunn  
23 after the government says we've had all these avenues to  
24 seizure property and then to forfeit it. And now we're not  
25 going to do it properly, but then make you bear the burden to

1 get it back. I think that's improper. I think that the last  
2 part about whether their sovereign immunity has been waived, I  
3 think we can table that until a determination has been made  
4 here on whether the proceeds are --

5 THE COURT: -- so I guess my question is, if I am  
6 understanding, how do we get there? Because what you are  
7 suggesting is it's not a Rule 41 hearing.

8 MR. DWERLKOTTE: I mean -- I think as long as the  
9 rules of evidence apply we can call it whatever we want to  
10 call it.

11 THE COURT: I don't think Mr. Bohling disagrees that  
12 the rules of evidence -- but I'm guess I'm having a problem  
13 myself with are you opposing that or do you disagree that this  
14 should be a Rule 41? Or you don't care if it's Rule 41,  
15 Judge, I just don't want the rules of evidence to apply?

16 MR. DWERLKOTTE: Right. Well, with the caveat that  
17 I think if it's a Rule 41 setting --

18 THE COURT: What other way can we do this? Let's  
19 say statute of limitation, the Court will vacate the  
20 administrative forfeiture. Statue of limitations has run on  
21 the Civil Forfeiture Act, because normally they would do that.  
22 They believe statute of limitation, where are we at then?

23 MR. DWERLKOTTE: Then they have to give the property  
24 back.

25 THE COURT: You're saying right now they have to

1 give it back?

2 MR. DWERLKOTTE: Right. I think that that would be  
3 what it is. And think that the cases Mr. Bohling cites are  
4 pre-CAFRA cases. I think those are interpreting CAFRA before  
5 2000 or cases that really didn't meaningfully discuss it. So  
6 I think that those cases no longer apply. So I think that we  
7 either have a hearing in which the CAFRA standard applies. We  
8 agree that CAFRA, the preponderance of the evidence standard  
9 applies or rules of evidence would apply. Or it can be -- I  
10 don't think it's a Rule 41, but if it was, the burden would  
11 still be on the government and it would still be to prove that  
12 it's traceable proceeds of drug trafficking by essentially the  
13 same standard. But I think it -- again, we agreed to the  
14 hearing on the bases that it would be more efficient, it's  
15 easier, it's been over eight years, we might as well get it  
16 over with.

17 THE COURT: I agree. I just want the record to be  
18 very clear what this Court is doing or not doing.

19 MR. DWERLKOTTE: Absolutely. What we would have a  
20 problem with then is the ability to not cross-examine most of  
21 these people, particularly Mr. Corredor, so it would be a very  
22 short hearing full of evidence that can't really refute  
23 because nobody is here. And we certainly didn't have an  
24 adequate opportunity to attack these items as part of the  
25 criminal case because it wasn't submitted to the Jury, they

1 weren't instructed on it, and a lot of it didn't come in in  
2 the criminal case, Your Honor.

3 THE COURT: Okay. Would you agree -- so my  
4 understanding of this Rule 41, it is a rule that is -- it's a  
5 rule of equity, is that what you are suggesting?

6 MR. BOHLING: Yes, Your Honor. I believe the only  
7 way that we can have a hearing today is under Rule 41. We  
8 haven't filed the civil forfeiture case.

9 THE COURT: You haven't filed that.

10 MR. BOHLING: Right.

11 THE COURT: And then I would have to determine the  
12 statute of limitations, you know, and --

13 MR. BOHLING: -- we would have to file a complaint  
14 and go through that.

15 THE COURT: Right.

16 MR. BOHLING: And the cases that we cite and I think  
17 generally the cases suggest that in this situation Rule 41  
18 becomes an equitable rule and the Court can deny the return of  
19 the property to someone like Mr. Dunn who we allege was  
20 involved in a drug conspiracy and we would allege -- and I  
21 agree with counsel's assertion that it is all burden of proof  
22 by preponderance to show you that these assets were involved  
23 in this drug conspiracy.

24 THE COURT: And that is how you make your equitable  
25 argument. Equity would suggest that you don't return them.

1 MR. BOHLING: Right.

2 THE COURT: Because of this involvement within the  
3 criminal activity.

4 MR. BOHLING: It's our burden and we have no problem  
5 with that.

6 THE COURT: Yeah.

7 MR. DWERLKOTTE: And I would just counter that  
8 equity I don't think post-CAFRA in 2000, has a meaningful role  
9 in the Court's analysis of whether he gets it back. It is  
10 either they have to initiate civil proceedings, and if they  
11 can't, they have to give the property back. I don't think --  
12 equity here doesn't demand that the Court exercise  
13 jurisdiction because they just give us the property back. And  
14 the government would then have the burden to say that this  
15 isn't right, and we should now have the hearing. It is not on  
16 Mr. Dunn to say, hold up, let's have this hearing because the  
17 government is out of time to file this. They've got it  
18 backwards.

19 MR. BOHLING: My only point is I think actually the  
20 majority of the cases that we cite on this this point are  
21 post-CAFRA. There is 2011, 2013, for example. While Clymore  
22 I think it kind of straddles between pre and post CAFRA. I  
23 think the case law that is developed since then is post-CAFRA.

24 MR. DWERLKOTTE: All except the Babb case which I  
25 don't think meaningful addresses the CAFRA, post-CAFRA

1 distinction. Are all cases that involve searches and  
2 forfeitures before 1999. So pre-CAFRA standards would apply.

3 The more recent cases that we have cited in our  
4 trial brief, Your Honor, are cases that in the normal  
5 situation where the government does file a proper civil  
6 forfeiture case, you kind of go through what we have laid out  
7 in CAFRA and how that burden applies to the proceedings. It  
8 would essentially be another civil case where you would have a  
9 right to a jury trial and everything like that, we just agree  
10 that we would have Your Honor decide the issue here rather  
11 than go through that whole process later. Efficiency, Your  
12 Honor.

13 THE COURT: I know about efficiency. I'm just  
14 trying to the best I can articulate for the record so I don't  
15 have this issue coming back to Division Three.

16 MR. DWERLKOTTE: Right. For Rule 41 equity wouldn't  
17 demand that you exercise jurisdiction.

18 THE COURT: I guess your point is this, despite the  
19 fact whether we have a hearing based on the civil or the  
20 CAFRA, the rules of evidence apply?

21 MR. DWERLKOTTE: Yes.

22 THE COURT: And you just simply -- whatever we call  
23 this hearing, to short-circuit it all, and to determine that  
24 the rules of evidence apply?

25 MR. DWERLKOTTE: I'll agree to that.

1 THE COURT: Would that be a fair assessment?

2 MR. DWERLKOTTE: I don't think Rule 41 applies, but  
3 I agree that we are here today to determine that.

4 THE COURT: So Rule 41 in your opinion again, and  
5 then we're going to move on and hear some evidence. So Rule  
6 41 applies in a situation where?

7 MR. DWERLKOTTE: Extraordinary circumstances, Your  
8 Honor.

9 THE COURT: This is not extraordinary. Or do you  
10 think it is extraordinary based upon them?

11 MR. DWERLKOTTE: Again, I think it is flipped. It's  
12 not extraordinary for Mr. Dunn because his remedy is the  
13 government should give his property back or file the civil  
14 forfeiture. So the extraordinary circumstances that the  
15 government can't apparently do that. So it is not on us to  
16 invoke Rule 41. The government I don't think can, but would  
17 have to invoke Rule 41. So that's why Rule 41 is not  
18 applicable here.

19 THE COURT: Can he argue you asked for Rule 41  
20 prematurely, like the government said, and then finally --  
21 because arguably until this Court forfeits or sets aside or  
22 vacates the forfeiture, then he would file a rule -- he would  
23 do, wouldn't he? If he wanted his stuff back, right? I  
24 thought you told me Rule 41 is a hearing for returning  
25 property, correct?

1 MR. DWERLKOTTE: That's correct.

2 THE COURT: Wouldn't he ask, hey, give me my  
3 property?

4 MR. DWERLKOTTE: I would agree like the Jackson case  
5 that I pointed out earlier is a prime example of when Rule 41  
6 would apply. If the administrative forfeiture component was  
7 done correctly, and then say the criminal case then go through  
8 with the forfeiture, then, yes, Mr. Dunn would have to file a  
9 Rule 41 motion, ask for the property back, and we would have  
10 the Rule 41 analysis. But it is because the administrative  
11 forfeiture is being set aside then we don't need to get to the  
12 Rule 41.

13 THE COURT: Because he doesn't have to ask it back,  
14 he should just get it back?

15 MR. DWERLKOTTE: Exactly. The burden is now on the  
16 other side for the government to either give it back or come  
17 forward in court with admissible evidence, not inadmissible  
18 evidence.

19 THE COURT: Ah. It took me a while, but I got your  
20 point now.

21 MR. DWERLKOTTE: It's very complicated.

22 THE COURT: This is kind of complicated. I'll give  
23 you one last stab at this. Did you hear -- I mean, why  
24 wouldn't we be back at Ground Zero? Now, you have to -- why  
25 is it a Rule 41? Why does Mr. Dunn have to ask for that?



1           MR. BOHLING: Well, I think the point that the Court  
2 made is the correct one. We have the property and he has to  
3 ask for it back. We can't return the cars, we don't have  
4 them.

5           THE COURT: Right.

6           MR. BOHLING: So there is no -- it's not possible  
7 for us to return that. And 983 does not speak to what happens  
8 after the administrative forfeiture is undone. That's a  
9 matter of case law. It doesn't say we have to give it back.  
10 So it would be essentially incumbent on Mr. Dunn to file a  
11 Rule 41 in order to trigger the process.

12          THE COURT: The process of returning the property?

13          MR. BOHLING: Right.

14          THE COURT: Okay.

15          MR. BOHLING: Right.

16          THE COURT: And I've got it now. This is more of an  
17 oral argument than anything else. That kinda makes sense to  
18 me. If I vacate we're back to this. And now we have -- they  
19 didn't forfeit it, but they do have -- well, they don't have  
20 the property but it seems that he's got to ask. What is the  
21 process for Mr. Dunn getting that property? How do you  
22 initiate that? You don't come in court and say, Judge, I want  
23 it back. Judge, based upon Rule 41, I want it back. I know  
24 they messed up. I know that I shouldn't have to do it, but  
25 what other mechanism is there for you to get that property?

1 Say I agree, 41 doesn't apply, how are you going to ask me to  
2 get your property back?

3 MR. DWERLKOTTE: The Court would enter an order that  
4 says you either give him the property back.

5 THE COURT: On what authority? Give me authority.  
6 I can't just do it because Judge Brian Wimes wants to do it.  
7 I need authority.

8 MR. DWERLKOTTE: Absolutely. It's Eighth Circuit  
9 case, US Volanty.

10 THE COURT: Volanty?

11 MR. DWERLKOTTE: V-O-L-A-N-T-Y. It's 79 F.3d 86.

12 THE COURT: Okay.

13 MR. DWERLKOTTE: That says the Court should either  
14 require the government to initiate civil proceedings or give  
15 the property back.

16 THE COURT: That's what this case says?

17 MR. DWERLKOTTE: That's what the Eighth Circuit case  
18 says, exactly on point.

19 THE COURT: So what are the facts then? Not that I  
20 don't believe, but what prompted this?

21 MR. DWERLKOTTE: Same. It was a DEA administrative  
22 forfeiture that was ineffective, i.e, void.

23 THE COURT: Set aside and vacated?

24 MR. DWERLKOTTE: So essentially that it would be, it  
25 would then be set aside under 983.

1 THE COURT: 983 set aside so here we are. They  
2 didn't institute any action to seize it therefore you're  
3 saying, hey, you either do that or give the property back?

4 MR. BOHLING: Sometimes though I have seen it where  
5 the government initiates the civil forfeiture before 983(e)  
6 vacation has been entered. But they could have done that,  
7 they didn't.

8 THE COURT: Okay.

9 MR. DWERLKOTTE: I will also say I think 983 does  
10 speak to exactly to this. I think 983(a) (f) or 983(a) (3) (a) (b)  
11 all tell us that if the government doesn't give proper notice  
12 that it gives the property back. And pending either civil  
13 filing or some other mechanism. So the statute itself tells  
14 us that Mr. Dunn gets the property back pending the civil  
15 forfeiture proceedings.

16 THE COURT: Okay.

17 MR. DWERLKOTTE: I think you've got US v. Volanty.  
18 And I think you've got 983.

19 THE COURT: So your saying the Rule 41 mechanism  
20 procedural would be if here it is different. Judge, if you  
21 didn't -- so if I didn't set aside, right? Because that is  
22 the difference here. If we have simply this, if we have this  
23 administrative forfeiture that I don't set aside, right?

24 MR. DWERLKOTTE: Right.

25 THE COURT: You can ask for it back by Rule 41. But

1 here what you're saying is, Judge, we don't have to submit it  
2 because you're going to vacate and set that aside?

3 MR. DWERLKOTTE: Right.

4 THE COURT: Now, this can't be a Rule 41. They have  
5 got to ask, they have got to initiate either a civil  
6 forfeiture administrative or some other remedy to get this, to  
7 forfeit this property, otherwise you need to say give him his  
8 property?

9 MR. DWERLKOTTE: Exactly. And I think that the only  
10 way under the facts of our case conceive a Rule 41 motion  
11 would be required by Mr. Dunn as if the government didn't want  
12 to give him his property back after the Court told him they  
13 had to.

14 THE COURT: How do I normally institute a Rule 41?  
15 I guess that is my question. For Mr. Dunn? If I am Mr. Dunn  
16 why do I use Rule 41?

17 MR. DWERLKOTTE: You would use Rule 41 in the event  
18 that the administrative forfeiture component was done  
19 correctly. Exactly on point with Jackson which is they had  
20 certain pieces of property were seized, portions of it later  
21 on he came back and said weren't part of the criminal case,  
22 but he was able to come back and show that certain pieces of  
23 property he had an ownership interest to. The Court said,  
24 okay, you still have it. Give him his property back.

25 THE COURT: Or no, he didn't have it.

1 MR. DWERLKOTTE: Well, the government in that case  
2 did still have certain pieces, but for the portions that it  
3 didn't then brings up the thing that we have tabled which is  
4 the little Tucker Act and Bivens Federal Tort Claim.

5 THE COURT: Well, what I'm saying is I have to make  
6 some determination.

7 MR. DWERLKOTTE: Yes.

8 THE COURT: And I can decide well, you didn't have  
9 this property, therefore, the full forfeiture is in affect,  
10 correct?

11 MR. DWERLKOTTE: One more time, I'm sorry.

12 THE COURT: Nothing. Let's present some evidence.

13 MR. DWERLKOTTE: All right. Admissible are  
14 inadmissible?

15 THE COURT: I think -- I'm not sure where you are  
16 going. Admissible are you talking in terms of hearsay? When  
17 you say admissible, you just said admissible or inadmissible.  
18 What are you talking about?

19 MR. CARPENTER: Your Honor, if I could jump in?

20 THE COURT: Sure.

21 MR. CARPENTER: Andy Carpenter for Mr. Dunn. Our  
22 position is they don't have any inadmissible evidence. It's  
23 all hearsay. I think I understood correctly when counsel said  
24 that they had invited an agent or an employee to come and tell  
25 what Mr. Corredor said many years ago, which is textbook

1 hearsay. I hate to be old hat and use the word rank, but that  
2 is pretty rank hearsay as they say. They want to put in the  
3 transcripts from the criminal trial which setting aside the  
4 fact that they don't deal with the issue of whether these  
5 three properties were used in part of the drug conspiracy. It  
6 is all completely hearsay.

7 THE COURT: And if you can use the mic and go to the  
8 podium.

9 MR. CARPENTER: I'm sorry.

10 THE COURT: So basically you're saying we don't want  
11 a hearing because any evidence that they have is inadmissible  
12 evidence?

13 MR. CARPENTER: We are ready for a hearing. We got  
14 last night at 6:00 their position that they get to put in  
15 inadmissible evidence.

16 THE COURT: What you believe to be inadmissible?

17 MR. CARPENTER: Yes. They sent us a brief that say  
18 we get to put in hearsay. We filed a brief that said all your  
19 putting in is hearsay. They refiled a brief in response that  
20 said, you bet it is, and we get to do it. There is nothing in  
21 their brief that said it isn't hearsay. They argued that  
22 under Rule 41 we get to put in hearsay all day as much hearsay  
23 as we want to and there's nothing you can do about it. We  
24 disagree. We were ready for a hearing. We've got  
25 cross-examination outlines. We are going to call witnesses.

1 They are not going to call any competent witnesses. They're  
2 going to call a woman who is going to talk about a  
3 conversation she overheard years ago by a drug dealer,  
4 admitted murderer, not reliable, can't get under the residual  
5 exception, who is flipping state's evidence in return for  
6 getting off the hook of the death penalty. So it is not going  
7 to get in under residual reliability. We can't cross-examine  
8 Mr. Corredor, the architect of this drug conspiracy. It would  
9 be incredible prejudice by that. That is -- there is no  
10 hearsay exception that allows them to do that. And that is  
11 the linchpin of their case. That is disturbing.

12 THE COURT: Okay. Mr. Bohling, I want you to  
13 respond, but what I can do as a practical is to just hear what  
14 evidence they want to put on and then make a determination  
15 whether I'll consider it in the ultimate ruling.

16 MR. BOHLING: I don't recall making any of those  
17 arguments last night actually. But in any case, I can assure  
18 you that --

19 MR. CARPENTER: -- I can show you his brief.

20 THE COURT: The beauty of attorneys.

21 MR. BOHLING: As I told the Court today while I  
22 researched the issue on Rule 41, while I believed that it  
23 would be the same as a motion hearing, suppression hearing,  
24 there's very little law on that. So I'm not trying to  
25 overstate the case. I will tell you that I think we have --

1 there is one instance --

2 THE COURT: So you believe you have non-hearsay.

3 MR. BOHLING: Yeah, sure.

4 THE COURT: And you agree that the rules of evidence  
5 apply?

6 MR. BOHLING: I -- yes. Yes. In large part, yes.  
7 There is one small piece that I will offer the Court that  
8 resembles what he is talking about. The Court can take it for  
9 what it is worth I think.

10 THE COURT: What are you presenting evidence wise?

11 MR. BOHLING: I'm presenting Mark King, the case  
12 agent, who was personally present at the time of the search  
13 warrant on Mr. Dunn's house and can testify as to that. And  
14 also --

15 MR. CARPENTER: That's not true. Mr. Dunn --

16 THE COURT: Hold on.

17 MR. CARPENTER: I understand, Your Honor.

18 THE COURT: You can't tell me what they put on.  
19 Now, you might have an objection with respect to what they are  
20 suggesting but you can't say it's not true because anybody can  
21 take the stand.

22 MR. CARPENTER: Well, we're voir dire him, that's  
23 fine.

24 THE COURT: Well, you can voir dire or whatever,  
25 cross-examination. But they have a right to put him on and



1 then I have a right to make a determination if it's  
2 evidentiary value and the Court will consider it or not  
3 consider it.

4 Hold on. Mr. Bohling.

5 MR. BOHLING: Thank you. I call Mark King.

6 THE COURT: Okay. We're going to move forward.

7 MR. CARPENTER: Understood.

8 THE COURT: Mr. King, I'm going to have you stop  
9 there and raise your right hand to be sworn.

10 MARK KING

11 Called as a witness on behalf of the GOVERNMENT, was  
12 duly sworn, and testified as follows:

13 THE COURT: Thank you, sir. You can have a seat.  
14 Counsel. And if you can just make sure that you speak in the  
15 microphone.

16 DIRECT EXAMINATION

17 BY MR. BOHLING:

18 Q Good morning.

19 A Good morning.

20 Q Please state your full name and spell your last name?

21 A Mark, middle initial R, last name, King, K-I-N-G.

22 Q How are you employed?

23 A I'm a Special Agent with Immigration and Customs  
24 Enforcement with Homeland Security Investigations.

25 Q How long have you had that job?

1 A 29 years.

2 Q What are your duties as a Special Agent?

3 A Investigate people and goods entering the United States.

4 Q Have you worked any cases involving the importation of  
5 narcotics?

6 A Yes, many cases.

7 Q And what is a case agent?

8 A A case agent would be in control of the case. We would  
9 be making the decisions as far as how to go about conducting  
10 the investigation, what techniques to use, making the reports,  
11 making sure everything was organized and presented for  
12 prosecution.

13 Q Are you familiar with a case that culminated in an  
14 indictment that involved as its central figure an individual  
15 named Alejandra Corredor?

16 A Yes, sir.

17 Q And were you involved in that case?

18 A Yes, I was a case agent along with Scott Francis.

19 Q Okay. And what were your general duties in regard to  
20 that investigation?

21 A Anything you could think of. Surveillance, interviews,  
22 we did Title III wiretap investigations, reports, tracker  
23 affidavits for tracker warrants, and then actually presenting  
24 the case for prosecution, and there were two trials that I  
25 testified in, two different trials regarding that case.

1 Q Are you personally familiar with the events that  
2 occurred during that investigation?

3 A Yes, sir, I am.

4 Q And with regard to the wiretap, can you describe for the  
5 Court what wiretaps were done in general during that case?

6 A There were two wiretaps on Alejandra Corredor's brother  
7 in law, Terrance Harris. And then I believe there were two  
8 separate wiretaps on Mr. Corredor himself. And then one of  
9 his right hand man, Arturo Gonzales, that was done out of the  
10 District of Kansas.

11 Q Can you give the Court kind of a big picture overview of  
12 what the Corredor conspiracy involved?

13 A Corredor was basically -- he spoke Spanish, and he the  
14 conduit, the majority of narcotics were coming out of Mexico  
15 entering the United States. Mr. Corredor spoke fluent  
16 Spanish. He was making arrangements to receive multi-kilogram  
17 shipments of cocaine. And then he would distribute that  
18 cocaine to his associates who would distribute the cocaine on  
19 the streets.

20 Q And who were his major associates during the course of  
21 the investigation?

22 A There was --

23 MR. CARPENTER: -- objection, Your Honor, they need  
24 to lay a foundation that he has first hand knowledge to this  
25 and that he is just not conducting hearsay from other sources.

1 MR. BOHLING: I thought I had, Judge.

2 THE COURT: Objection overruled. I think they have.  
3 He's the case agent and he talked about that. So objection  
4 overruled. He can answer.

5 BY THE WITNESS:

6 A There was -- he actually financed a rap group Block Life  
7 Entertainment and there was Dandari Jones, Dennis Westbrook,  
8 Adrian Dunn, Danny Moore, Arturo Gonzales. I'm sure there are  
9 others that escape my memory at this point in time.

10 Q And do you have personal knowledge of what Mr. Dunn's  
11 role was during the conspiracy?

12 A Yes, sir.

13 Q And what is the basis of that knowledge?

14 A Well, when I started the investigation I spoke to  
15 informants that were given me information about the core  
16 group.

17 MR. CARPENTER: Objection, Your Honor, that is  
18 hearsay.

19 MR. BOHLING: He hasn't said anything substantive  
20 yet, Judge.

21 THE COURT: It calls for hearsay maybe. But well,  
22 we're not there yet. You can make your objection. I'll  
23 overrule the timeliness on that maybe. Go ahead.

24 BY MR. BOHLING:

25 Q Go ahead and complete your answer. And I'm just asking

1 you about your basis for knowledge for Mr. Dunn?

2 A We had intercepted phone calls between Mr. Corredor and  
3 Mr. Dunn, and there were subsequent interviews with  
4 Mr. Corredor following his arrest that outlined --

5 MR. CARPENTER: -- it's hearsay Your Honor, what Mr.  
6 Corredor said.

7 MR. BOHLING: I haven't asked him what Mr. Corredor  
8 said.

9 MR. CARPENTER: He's telling it.

10 THE WITNESS: Mr. Corredor testified that --  
11 BY MR. BOHLING:

12 Q -- right. I'm just asking about your basis of knowledge  
13 at this point. So I understand. Now, as far as, as far as  
14 the intercepted conversations, did you listen to those  
15 personally?

16 A Yes, sir, I did.

17 Q And were you involved with what we call the wire room?

18 A Yes, sir, I was.

19 Q What was your role there?

20 A We have monitors that are contract monitors that come in  
21 and actually as the calls come in live, they listen to the  
22 calls and get synopsis and transcribe the calls, and we  
23 oversee their activities. And as the information comes in we  
24 make a decision if surveillance needs to be done or some kind  
25 of action needs to be taken.

1 Q So you would listen to those conversations pretty much  
2 in realtime?

3 A Yes, sir.

4 Q And then making decisions about the investigation based  
5 on those calls?

6 A Yes, sir, that's correct.

7 Q Were you personally present at any point during the  
8 search warrant at Mr. Dunn's home?

9 A Yes, I was.

10 Q And what day was that?

11 A That was June 12th, 2009.

12 Q Okay. And just in general when did this conspiracy  
13 begin? When was -- what was the defining starting point of  
14 the conspiracy for purposes of court, if you remember?

15 A I don't remember what we put for the starting date. The  
16 investigation started in 2008, but I don't remember what we  
17 put for the starting date. But we began in earnest in the  
18 spring of 2008.

19 Q Okay. And based on the conversations you listened to,  
20 what was Mr. Dunn's role in the conspiracy?

21 MR. CARPENTER: Objection, that is hearsay, Your  
22 Honor. He is relating the substance of conversation --

23 THE COURT: -- what was the question again?

24 MR. BOHLING: Based on the intercepted  
25 conversations.

1 MR. CARPENTER: That's hearsay.

2 MR. BOHLING: I don't believe -- it would involve  
3 Mr. Dunn, I don't believe it's hearsay at all.

4 THE COURT: Well, you need to just rephrase the  
5 question. I'll sustain.

6 MR. BOHLING: Okay.

7 BY MR. BOHLING:

8 Q Based on your role as case agent in the investigation,  
9 what was Mr. Dunn's role in the conspiracy?

10 MR. CARPENTER: Objection. He got that information  
11 from his role as a case agent by hearing hearsay. He was not  
12 present during those conversations. He overheard them. And  
13 he is relaying the conversation between two people not in  
14 court that I can't cross-examine. Objection.

15 THE COURT: Okay. I'm going to overrule the  
16 objection. I want to hear how he answers that question.

17 THE WITNESS: Mr. Corredor supplied Mr. Dunn with  
18 cocaine for distribution.

19 BY MR. BOHLING:

20 Q Okay. Now, let's turn our attention back to June 12th,  
21 of 2009. That was the date of what we call the takedown in  
22 the case?

23 A Actually the takedown occurred on June 11th, the day  
24 before. And I didn't get a search warrant for the house. The  
25 house was secured and we didn't actually execute the warrant

1 until June the 12th, the following day.

2 Q And do you remember the address of that house?

3 A I believe it was 8717 Kentucky Avenue, Kansas City,  
4 Missouri.

5 Q Okay. Now, in the days before, the several days before  
6 June 11th and June 12th, were there intercepted conversations  
7 between Mr. Dunn and Mr. Corredor?

8 A Yes, there were.

9 Q Okay. And what was the nature of those conversations?

10 MR. CARPENTER: Objection, Your Honor, that's  
11 classic hearsay.

12 MR. BOHLING: It's not hearsay. It involves a party  
13 opponent, Mr. Dunn.

14 MR. CARPENTER: It absolutely is. Because  
15 Mr. Corredor's statements are not a party opponent, and they  
16 are using Mr. Corredor's statements as well.

17 THE COURT: What was the question again?

18 MR. BOHLING: Would the nature of the conversation  
19 between Mr. Corredor and Mr. Dunn in the days before the  
20 search warrant in Mr. Dunn's house.

21 I'm not offering Mr. Corredor's statements for the  
22 truth of the matter asserted. I'm just offering them for the  
23 sequence of events that lead to the search warrant.

24 THE COURT: Subsequent conduct?

25 MR. BOHLING: Yes. The sequence of events. And Mr.



1 Dunn's statements are certainly admissible in Court against  
2 him. He's a party appointed.

3 MR. CARPENTER: There not giving Mr. Dunn's  
4 statements. They are giving this agents eight years later  
5 thirdhand recollection of conversations between two other  
6 people. Which is both incompetent and hearsay.

7 THE COURT: I don't know if it is incompetent.

8 MR. BOHLING: Mr. King remembers.

9 THE COURT: Is the basis of your question -- it is  
10 not hearsay, if it's not hearsay, what are you trying to show?

11 MR. BOHLING: Well, it is certainly not hearsay as  
12 to Mr. Dunn's side of the conversation because Mr. Dunn is in  
13 Court, he is a partied opponent.

14 THE COURT: Right.

15 MR. BOHLING: As to Mr. Corredor's side, I think it  
16 is simply to contextualize Mr. Dunn's statement which is what  
17 is important here in Court. And to show also the course of  
18 events that leads to ultimately to the seizure of the \$41,000  
19 dollars.

20 MR. CARPENTER: And can I just respond to that by  
21 saying without Mr. Corredor's completely inadmissible hearsay  
22 aside, it makes no sense and it is useless.

23 THE COURT: Well, I don't know if it makes no sense.  
24 Because sometimes you miss evidence to suggest that, Judge, it  
25 is not for the truth of the matter asserted. I'm going to

1 show the subsequent conduct of why the police officers did  
2 what they did. And that, that would be sustained. You would  
3 be overrule and I'd allow -- don't.

4 MR. CARPENTER: -- that's true.

5 THE COURT: I know it's true. And if it's not  
6 someone else higher than you would have to tell me it is not  
7 true, i.e. the Eighth Circuit, would have to go at that point  
8 to show why they did what they did. Not the truth of the  
9 matter asserted. So these declaratory statements that are so  
10 -- no. There is nothing definite and that certainly isn't  
11 definite. So if you're talking about Mr. Dunn or if the  
12 question goes to subsequent conduct of why they did what they  
13 did, I'm going to overrule the objection. If you are using it  
14 just to get what this other defendant said, Mr. Corredor said,  
15 it's hearsay.

16 MR. BOHLING: It's not necessarily hearsay if it's  
17 not going to the truth of the matter asserted. It's going to  
18 contextualize Mr. Dunn's statements. Mr. Dunn's statement are  
19 -- you can't untangle the two, but there is no question that  
20 Mr. Dunn's statements are admissible.

21 MR. CARPENTER: But you can't use it to  
22 contextualize my client's statement unless what Mr. Corredor  
23 said is true. So you are saying that you are offering it for  
24 the truth.

25 MR. BOHLING: It's also conspiratorial

1 conversations, Your Honor, because this is during the course  
2 of a drug conspiracy of which Mr. Dunn and Mr. Corredor have  
3 been convicted.

4 THE COURT: Hold on. I don't know what Special  
5 Agent King is going to say. To the extent you're talking  
6 about Dunn, he can comment on. I don't know the intertwined  
7 nature, the intertwined nature of the testimony of what you're  
8 trying -- I just don't know. I want to hear what Special  
9 Agent King has to say. And see -- I don't know the purpose of  
10 it. Rephrase the question let's cover this again.

11 MR. BOHLING: Yes, Your Honor.

12 BY MR. BOHLING:

13 Q Did you intercept conversations between Mr. Dunn and  
14 Mr. Corredor in the days before June 12th?

15 A Yes.

16 Q And was there a series of conversations?

17 A Yes.

18 Q What did Mr. Dunn communicate during those  
19 conversations, if you recall?

20 MR. CARPENTER: Objection.

21 THE COURT: Overruled.

22 BY THE WITNESS:

23 A That he had \$41,000 dollars to pay to Mr. Corredor.

24 Q Okay.

25 A That was on June 9th.

1 Q Okay.

2 MR. BOHLING: And Your Honor, may I approach the  
3 witness?

4 THE COURT: Yes.

5 MR. BOHLING: I provided the witness with our  
6 exhibits which everyone has a binder at this point.

7 BY MR. BOHLING:

8 Q If you could go to Exhibit 5, Special Agent King. And  
9 what is Exhibit 5?

10 A Yes, sir. I'm there.

11 Q What is that exhibit?

12 A That is a transcript of a telephone call on June 9th,  
13 2009, between Mr. Corredor and Mr. Dunn.

14 Q And is that the transcript of the call that you just  
15 referenced?

16 A Yes, sir, it is.

17 Q Okay. And is this the call that concerns the discussion  
18 of the \$41,000 dollars?

19 A Yes, sir, it is.

20 MR. BOHLING: Your Honor, I would like to introduce  
21 for the purposes of this hearing Exhibit 5 and also Exhibit 4  
22 which I will play for the Court, which is the underlying  
23 actual recorded phone call.

24 THE COURT: Counsel.

25 MR. CARPENTER: We object on two basis. First of

1 all, hearsay basis.

2 Second of all, lack of foundation because there has  
3 been no indication that this agent can identify my client's  
4 voice, and anyone can identify that that was my client on the  
5 other end. As a matter fact he can't. So foundation, hearsay  
6 objection.

7 MR. BOHLING: Can I -- if I may ask another  
8 question?

9 BY MR. BOHLING:

10 Q Can you identify Mr. Dunn's voice?

11 A No, sir, I cannot.

12 MR. CARPENTER: Same objection.

13 BY MR. BOHLING:

14 Q All right. That's fine.

15 On this call do you have any other indications from  
16 your investigation of who the speakers are?

17 MR. CARPENTER: Objection, that would be hearsay.

18 THE COURT: Overruled. I'm going to allow him to  
19 answer.

20 BY THE WITNESS:

21 A Yes, sir, we determined through the investigation  
22 through intercepted phone calls that this was Adrian Dunn.

23 Q Okay. And how did you determine that?

24 A Through the conversations between them when they  
25 referred to him as A.D. which is Mr. Dunn's initials.

1 Q Okay. And were there numerous recorded conversations  
2 between the two of them?

3 A Yes, sir.

4 Q And contextually was there discussion about his home  
5 during these conversations?

6 A About his home?

7 Q Yeah.

8 A There were discussions about the Kentucky address, 8717.

9 MR. CARPENTER: Objection.

10 MR. BOHLING: It's going to the foundation of how he  
11 knows it is Mr. Dunn, Your Honor.

12 MR. CARPENTER: You can't use hearsay to lay a  
13 foundation. That's inadmissible.

14 MR. BOHLING: The question is the reliability. I  
15 think every indication in his investigation this is Mr. Dunn  
16 increases the reliability the finding that it is Mr. Dunn  
17 talking.

18 MR. CARPENTER: But you can't use hearsay to lay a  
19 foundation for more evidence.

20 THE COURT: Here's what we're going to do with  
21 respect to this. The Court is going to hear this. The Court  
22 has noted and you know, the objection is going to be a  
23 standing and ongoing objection as it relates to any  
24 conversation that Mr. Dunn had with this other individual Mr.  
25 Corredor related to the \$41,000, related to the house. The

1 Court understands, but you can make your objection.

2 MR. CARPENTER: Just for appeal, Your Honor.

3 THE COURT: Yes. You can make your objection if you  
4 think a question doesn't necessarily cover what I suggested.

5 Now, it's the Court's intent to hear this evidence  
6 and then make a determination whether I will consider it in  
7 the Court's ultimate decision. I understand the argument is  
8 hearsay. And if I don't consider it and then obviously I'll  
9 say so. But I do want to hear everything now.

10 Proper objections, I think you continue to make your  
11 objections if you think this -- if the question and answer  
12 goes outside of what I just suggested. Make your objection,  
13 preserve it. And I am noting the testimony which is  
14 questionable or arguably admissible or not admissible.

15 MR. CARPENTER: We will have a standing objection.  
16 If there's something different I will object to that.

17 THE COURT: Thank you.

18 MR. BOHLING: Thank you, Your Honor. I appreciate  
19 that.

20 BY MR. BOHLING:

21 Q So Agent King, I would like to play for you and the  
22 Court, Exhibit 4, which is the actual conversation as to which  
23 this transcript relates.

24 THE COURT: And I'm going to admit Exhibit 4 and 5  
25 for purposes of the hearing, understanding that it is under

1 objection of the plaintiff.

2 MR. CARPENTER: Your Honor, we also have a  
3 foundational objection to the audiotape as well.

4 THE COURT: Yes.

5 MR. CARPENTER: There's been no chain of custody,  
6 there has been no showing this agent was present and actually  
7 in the van when this was overheard which is a requirement,  
8 there has been no showing that he can authenticate that audio  
9 file. So we have a separate foundational objection to that.  
10 They need to lay all that foundation which they cannot do.

11 THE COURT: That's will be noted for the record.  
12 You can play the video.

13 (THEREUPON; Government's Exhibit No. 4 and 5 was  
14 admitted into evidence and were published to the Court.)

15 MR. BOHLING: I think that is it.

16 MR. CARPENTER: Your Honor, I would lodge one more  
17 objection?

18 THE COURT: Sure.

19 MR. CARPENTER: That was unintelligible. I couldn't  
20 understand what was being said. I object to the transcript  
21 that someone else out of court, we have no idea who it was,  
22 has transcribed it as. I can't claim that is accurate,  
23 neither can this agent, neither can anyone here, that was  
24 unintelligible. And the translation, there is not foundation  
25 to that. So we object to the transcript. And we object to



1 the admission of the audio file --

2 THE COURT: I understand that. I'm not  
3 understanding the unintelligible necessarily. But you've made  
4 your objection. I'll follow the law.

5 MR. CARPENTER: I was having real trouble.

6 THE COURT: And you can question him on  
7 cross-examination if you choose.

8 MR. BOHLING: I will note for the record that these  
9 were all provided within the last -- several weeks ago, I  
10 think, on their request. So they have certainly have had the  
11 opportunity to both listen to them and check the accuracy of  
12 the transcript.

13 MR. CARPENTER: It got no more intelligible in the  
14 time that I have had it, Your Honor.

15 THE COURT: Well, I haven't had it and it was  
16 intelligible to me.

17 MR. CARPENTER: Probably better ears than I do.

18 THE COURT: I don't know about that. Maybe I just  
19 understand it better than you. Maybe that.

20 Objection noted.

21 BY MR. BOHLING:

22 Q Now, Exhibit 4, that's is something that you have heard  
23 before, correct?

24 A Yes, sir.

25 Q Okay. In what context did you hear that?

1       A       It as -- as part of the investigation. We have gone  
2 through all of these calls. We sat down with Mr. Corredor and  
3 reviewed these calls.

4       Q       Okay. I'd like to turn your attention then to June  
5 12th. And that was the day of the search warrant at the  
6 Kentucky Street address?

7       A       That's correct.

8       Q       Okay. And you indicated at some point you arrived on  
9 scene?

10      A       Yes, sir. I actually delivered the search warrant to  
11 the location.

12      Q       Okay. And were you personally present or did you  
13 witness the seizure of the \$41,000 dollars?

14      A       Yes, sir.

15      Q       Okay.

16               MR. CARPENTER: Your Honor, we have an objection to  
17 this line of testimony. That he doesn't have the foundation  
18 for personally observing the --

19               Would you prefer that we voir dire him before or  
20 would you like to hear it now and we can bring it up at cross?

21               THE COURT: I think you will have the opportunity to  
22 cross-examine.

23               MR. CARPENTER: Okay.

24               MR. DWERLKOTTE: Your Honor, can I ask one question.  
25 Mr. Dunn is trying to communicate with us. Is it okay if he

1     could be uncuffed by the Marshals so that his hands could  
2     move?  Rather than me getting up and down, and he is wanting  
3     to communication with us, and we haven't been able to speak a  
4     whole lot.  I don't know if that is possible if he is not  
5     cuffed?

6             THE COURT:  Let me check with the Marshal.  Is there  
7     any reason not to.

8             THE MARSHAL:  Your Honor, it has always been our  
9     policy to have the defendant restrained.

10            THE COURT:  Well, what are you trying to  
11     communicate?  Is he writing?

12            MR. DWERLKOTTE:  Well, I think he is trying to.  I  
13     just didn't want to keep having to run over there.

14            THE COURT:  Well, just move your chair over there  
15     and sit by him.  I can still see him and you can still talk to  
16     him.  That's how we'll do it.  That way we are all happy.

17            Counsel, you can continue.

18     BY MR. BOHLING:

19       Q     Yes.  Turning your attention to -- well, let me ask this  
20     first.  Do you know where the \$41,000 dollars was located?

21       A     There was a Chevrolet Caprice parked in the garage,  
22     enclosed garage, and it was in the trunk in a yellow plastic  
23     bag next to a speaker in the trunk.

24       Q     And did you personally see the Caprice in the garage?

25       A     Yes, sir, I did.

1 Q Okay. And turning your attention to Exhibit 6, is that  
2 a photograph?

3 A Yes, sir.

4 Q Do you recognize that photograph?

5 A Yes, sir. That is the Caprice in the garage at 8717  
6 Kentucky.

7 Q And is this on June 12th, the day of the search warrant?

8 A Yes, sir.

9 Q Is that a fair and accurate representation of how the  
10 Caprice appeared on that day?

11 A Yes, sir.

12 MR. BOHLING: Your Honor, I move for the admission  
13 of Exhibit 6 into evidence for purposes of the hearing.

14 MR. CARPENTER: No objection.

15 THE COURT: Plaintiff's Exhibit No. 6 shall be  
16 admitted.

17 MR. BOHLING: Thank you. I think we marked them as  
18 government. I think we are the defendant, Your Honor.

19 THE COURT: I'm sorry.

20 MR. BOHLING: That's all right. We are usually the  
21 plaintiff.

22 THE COURT: Government's Exhibit No. 6 shall be  
23 admitted.

24 (THEREUPON; Government's Exhibit No. 6 was then  
25 admitted into evidence by the Court.)

1 BY MR. BOHLING:

2 Q If you look at Exhibit No. 7.

3 A Yes, sir.

4 Q Is that also a photograph?

5 A That is the same vehicle, the Caprice.

6 Q Okay. And just for the record, to your knowledge, is  
7 this Caprice the same Caprice that is the subject of our  
8 hearing today in terms of having been a forfeited asset?

9 A Yes, sir, it is.

10 Q And is that a fair and accurate representation of the  
11 Caprice and its license plate as it appeared on that date?

12 A Yes, it is.

13 MR. BOHLING: Your Honor, I move for the admission  
14 of Government's Exhibit 7 into evidence.

15 MR. CARPENTER: No objection.

16 THE COURT: Government's Exhibit 7 shall be  
17 admitted.

18 (THEREUPON; Government's Exhibit No. 7 was then  
19 admitted into evidence by the Court.)

20 BY MR. BOHLING:

21 Q And turning to Exhibit 8. Do you recognize that  
22 photograph?

23 A Yes, sir, I do.

24 Q And what does it depict?

25 A That was a bag containing \$41,000 dollars in US currency

1 that was recovered from the back of the Caprice we just looked  
2 at in the pictures.

3 Q Okay. Is that a fair and accurate depiction of how the  
4 bag and the car appeared on that day?

5 A Yes, sir.

6 MR. BOHLING: Your Honor, I move for Government's  
7 Exhibit No. 8 into evidence.

8 MR. CARPENTER: We object to that. There has been  
9 no foundation laid that the agent actually took part in the  
10 search of the trunk or was anywhere approximate enough to  
11 identify that view is accurate.

12 MR. BOHLING: I don't think it is required that he  
13 be involved in the search per se. He just has to be there and  
14 be able to recognize the scene.

15 THE COURT: Government's Exhibit No. 8 shall be  
16 admitted over objection.

17 (THEREUPON; Government's Exhibit No. 8 was then  
18 admitted into evidence by the Court.)

19 BY MR. BOHLING:

20 Q Turning to Government's Exhibit No. 9. Do you recognize  
21 that exhibit?

22 A Yes, sir. It is the same bag of money in the trunk of  
23 the Caprice.

24 Q And that is just more of a close up view than we had in  
25 No. 8?

1 A I'm sorry?

2 Q That's more of a close up view?

3 A Yes.

4 Q And is that a fair and accurate depiction of how the  
5 money appeared on that day?

6 A Yes.

7 MR. CARPENTER: Same objection.

8 THE COURT: Objection will be admitted -- I mean,  
9 Government's Exhibit 9 shall be admitted over objection.

10 (THEREUPON; Government's Exhibit No. 9 was then  
11 admitted into evidence by the Court.)

12 BY MR. BOHLING:

13 Q Looking at Government's Exhibit No. 10, do you recognize  
14 that scene?

15 A It is the same bag of money from Exhibit 9 and 10, just  
16 removed from the trunk and set on top of the speaker in the  
17 trunk of the Caprice.

18 Q So is -- the purpose of this photograph is to show the  
19 speaker essentially?

20 A I'm sorry?

21 Q Was the purpose of this photograph to show the speaker  
22 in the trunk?

23 A No, it was to show the bag of money removed from the  
24 place where it was concealed so you could see the entire bag.

25 Q Is that a fair and accurate depiction of how the bag of

1 money appeared on that day?

2 A Yes, sir.

3 MR. BOHLING: Your Honor, I'd move Exhibit No. 10  
4 into evidence.

5 MR. CARPENTER: Same objection.

6 THE COURT: Government's Exhibit No. 10 shall be  
7 admitted over objection.

8 (THEREUPON; Government's Exhibit No. 10 was then  
9 admitted into evidence by the Court.)

10 BY MR. BOHLING:

11 Q Government's Exhibit No. 11, do you recognize the scene  
12 depicted in that photograph?

13 A Yes, sir. It is the same bag of money from Exhibits 8,  
14 9, and 10. Just a different view with an agent holding it up.

15 Q In this view what can you then see that is different  
16 than the other photographs.

17 A You can actually see that it is US currency.

18 MR. BOHLING: Your Honor, I move Exhibit No. 11 into  
19 evidence?

20 MR. CARPENTER: Same objection.

21 THE COURT: Government's Exhibit No. 11 shall be  
22 admitted over objection.

23 (THEREUPON; Government's Exhibit No. 11 was then  
24 admitted into evidence by the Court.)

25 BY MR. BOHLING:



1 Q Okay. And then Government's Exhibit No. 12, do you  
2 recognize that exhibit?

3 A Yes, sir.

4 Q And what is depicted there?

5 A It is the Chevrolet Caprice in the garage at 8717  
6 Kentucky.

7 Q And that is on the day of the search warrant?

8 A Yes, sir.

9 Q Is that a fair and accurate depiction of the Caprice as  
10 it appeared that day?

11 A Yes, sir.

12 MR. BOHLING: Your Honor, I move Exhibit 12 into  
13 evidence.

14 MR. CARPENTER: Same objection.

15 THE COURT: Government's Exhibit No. 12 shall be  
16 admitted over objection.

17 (THEREUPON; Government's Exhibit No. 12 was then  
18 admitted into evidence by the Court.)

19 BY MR. BOHLING:

20 Q Agent King, once the \$41,000 dollars was located what  
21 happened to it?

22 A It was taken to a bank and converted to a cashier's  
23 check and turned over to Customs and Border Protection for the  
24 initiation of forfeiture.

25 Q And if you know, is this the same \$41,000 dollars that

1 is one of the assets involved in the action before the Court  
2 today?

3 MR. CARPENTER: Objection, Your Honor, he keeps  
4 saying \$41,000. I don't think there is any foundation that  
5 the agent actually counted the money that was taken out of the  
6 trunk. And to the extent that someone told him it was  
7 \$41,000, that is hearsay again.

8 THE COURT: Overruled.

9 BY THE WITNESS:

10 A It is the same \$41,000 dollars that this action is  
11 regarding today.

12 Q Okay. And Agent King, just to shore up the record, you  
13 were personally involved in communicating with the FP&S  
14 officer during the course of the administrative proceeding,  
15 right?

16 A Yes, sir.

17 Q Okay. And so you had discussions with her about these  
18 funds and the forfeiture action?

19 A Yes, sir.

20 Q Okay. And you don't have any doubt that this money that  
21 was recovered at Kentucky is the same money that was  
22 ultimately administrative forfeited?

23 A I have no doubt.

24 Q Okay. Thank you.

25 MR. BOHLING: Your Honor, that's all I have for this

1 agent. Oh, I do have if I could just two more things?

2 THE COURT: Yes.

3 MR. BOHLING: I think we're in agreement on this but  
4 if I could approach the witness very quickly.

5 THE COURT: That's fine.

6 BY MR. BOHLING:

7 Q If you can look -- I've marked -- counsel, I've marked  
8 this Exhibit 14 the title document as to the Caprice, and  
9 Exhibit No 15, the title of the Corvette. Do you recognize  
10 those documents, Agent King?

11 A I have not seen these documents before.

12 MR. BOHLING: All right. Can we just stipulate that  
13 these items were sold?

14 MR. CARPENTER: We will stipulate, yes.

15 MR. BOHLING: All right. Parties will stipulate  
16 that these items were sold. Do you have any objection,  
17 counsel, to me providing these to the Court?

18 MR. CARPENTER: No.

19 MR. BOHLING: Okay. Thank you. Your Honor,  
20 pursuant to that stipulation I'll provide to the Court what  
21 I've marked as Government's Exhibit 15 and 16. And these are  
22 reflective of the sale of the Caprice and the Corvette.

23 THE COURT: Based on the parties stipulation,  
24 Exhibit Nos. 14 and 15 shall be admitted.

25 (THEREUPON; Government's Exhibit Nos. 14 and 15 were

1 then admitted into evidence by the Court.)

2 MR. BOHLING: And we will add those to the exhibit  
3 list.

4 Thank you. With that, I believe I have completed  
5 with direct.

6 THE COURT: Thank you. Mr. Carpenter.

7 MR. CARPENTER: Thank you.

8 CROSS-EXAMINATION

9 BY MR. CARPENTER:

10 Q Good morning, Agent King, how are you?

11 A I'm fine. How are you?

12 Q Good, thanks.

13 A Good.

14 Q My name is Andy Carpenter, we haven't had a chance to  
15 meet yet, but good morning.

16 A Good morning.

17 Q Let us talk about the audio file that you were asked to  
18 testify about which was Defendant's Exhibit 4, correct?

19 A Yes, sir.

20 Q How long ago was that audio file recorded?

21 A Eight years ago.

22 Q It has been a little bit more than eight years, right?

23 A That's right.

24 Q And about how many hours of recorded wiretap audiotape  
25 at operation Blockbuster -- operation Blockbuster is the name

1 of this operation, correct?

2 A That's right.

3 Q About how many total hours of recorded audiotape did  
4 operation Blockbuster record?

5 A I would have no idea at this point. It's been eight  
6 years. So hundreds of hours.

7 Q A lot?

8 A Yeah.

9 Q And it is been a long time, understandably. And you  
10 said you had a private contracting group who was doing the  
11 actual monitoring and recording, right?

12 A Yes, sir, that is correct.

13 Q They're the guys sitting in the vans that you see on TV  
14 with the headphones on kind of recording it, right?

15 A No, not exactly.

16 Q No headphones?

17 A Yes, they have headphones. It's not done in a van.

18 Q Fair enough. Fair enough. I've seen too many Sopranos  
19 episodes apparently.

20 But safe to say that you weren't present when most  
21 of those recordings were done, right?

22 A I was around an awful lot. It wasn't there for all the  
23 calls, no.

24 Q Where you present and can you remember eight years later  
25 whether you were present that that recording that is Defense

1 Exhibit 4 was done?

2 A No, I can't remember.

3 Q So there's really no way for you to say that that  
4 recording accurately records and memorializes what came  
5 through the wire that day, is there?

6 A Yeah, absolutely, I can. The calls come in they are  
7 recorded and the actual disk on which the calls are recorded  
8 are taken to the Court and sealed at the end of the wiretap.

9 Q It's been eight years, right?

10 A Yes, but it hasn't changed in eight years.

11 Q Have you been in custody -- have you been the custodian  
12 of that voice file?

13 A Am I the custodian?

14 Q Right.

15 A No.

16 Q So you don't know where it has been the last eight  
17 years?

18 A It has been in evidence.

19 Q So there is no way -- who has been the custodian? Who  
20 has been in charge of it over the last eight years?

21 A I believe that would be our technical enforcement  
22 officer, Cliff Howard.

23 Q So it has not been in your custody over the last eight  
24 years, correct?

25 A Not mine personally.

1 Q Right. And you're not the custodian of it so you can't  
2 testify as to where it's been and how it's been stored,  
3 correct? Correct?

4 A Well, let me -- I'm thinking about it.

5 Q Sure. You're thinking. I appreciate it.

6 A I can testify I know where it has been stored. I'm not  
7 the custodian of it.

8 Q Right. But you don't have any personal knowledge that  
9 this particular file was here, not moved, not taken by anyone  
10 over that eight year gap, right?

11 A No, I can't say that.

12 Q Right. And like we have established, you didn't have  
13 the opportunity to hear the contemporaneous conversation when  
14 it came in, right?

15 A I could have been there.

16 Q But you don't know. In fairness, right?

17 A Yes.

18 Q So you have no independent recollection where you can  
19 say that this is an accurate tape? In other words you have to  
20 rely on the general processes, right?

21 A Yes.

22 Q Fair enough. Fair enough.

23 Let's talk about operation Blockbuster.

24 A Okay.

25 Q Huge operation, right?

1 A Yes, sir.

2 Q It went on in some form for years, right?

3 A Yes, sir.

4 Q Who is Alejandra Corredor, a little background?

5 A Alejandra Corredor, he first came to my attention in  
6 2004. We were doing wiretap investigation and he was  
7 intercepted. And after all of the arrest in that case were  
8 made, there was an effort to identify who he was, and over  
9 time we identified him as Alejandra Corredor.

10 Q That was about 2006 that you figured out what his real  
11 identify was, right?

12 A Yes, that's right.

13 Q So you have been looking to get this gentleman for  
14 years, correct?

15 A No exactly. I have a lot of different investigations.  
16 He was on the radar, he was off the radar, he came back in.  
17 We conducted an investigation and we had operation  
18 Blockbuster.

19 Q Sure. And it really began in earnest what in 2008, is  
20 that accurate?

21 A That's accurate.

22 Q Okay. So it went on as an active operation for several  
23 months?

24 A I would say a year more or less.

25 Q Fair enough.



1           And the focus of operation Blockbuster wasn't just  
2 Alejandra Corredor, but you also wanted to indict and convict  
3 all members of his drug trafficking conspiracy, right?

4       A     Fair enough.

5       Q     You were casting a broad net, right.

6       A     Well, the goal in the investigation is always to go one  
7 step higher than the person you are looking at.

8       Q     Absolutely. And at the time you were working for  
9 Homeland Security was your agency, correct?

10      A     Yes, sir.

11      Q     There were multiple agencies involved by the time it was  
12 done, correct?

13      A     Yes, sir.

14      Q     KCPD locally, right? And the DEA as well?

15      A     Yes.

16      Q     Basically you guys did a lot of investigative work  
17 during the course of this undercover operation?

18      A     Yes, sir.

19      Q     You guys did wiretaps, right?

20      A     Yes, sir.

21      Q     Why do you do wiretaps, briefly, what are you trying to  
22 catch?

23      A     It's an investigative tool of last resort. After you  
24 have used every other investigative method, surveillance,  
25 witnesses, trackers, search warrants, whatever, it helps -- it

1 actually helps you do a better job of defining the whole  
2 organization, developing probably cause to charge and convict  
3 these people.

4 Q And in a nutshell you are trying to catch people  
5 recorded on tape talking about drug activity, correct?

6 A You are trying to dismantle a criminal organization.

7 Q And how many wiretaps did you do in this case, and by  
8 this case, I mean operation Blockbuster?

9 A Well, there were extensions. I want to say maybe six or  
10 seven?

11 Q Six or seven different individuals. Do you remember who  
12 the individuals were?

13 A Yes, sir.

14 Q Were any of them Adrian Dunn?

15 A No, sir.

16 Q So you never tapped Adrian Dunn's phone?

17 A No, sir.

18 Q I think you said earlier there were hundreds of hours of  
19 conversations recorded though throughout the course of this?

20 A Yes.

21 Q So you had a lot of audiotaped wiretap information  
22 basically?

23 A That's correct.

24 Q And you guys did some controlled buys during the course  
25 of the investigation, right?

1 A You know, I don't think we did one controlled buy.

2 Q Do you remember testifying about doing a controlled buy  
3 during your testimony in the criminal trial?

4 A Possibly. I'd have to go back and look at the  
5 transcript.

6 Q It's been a long time, understandably. Video  
7 surveillance though. Do you remember the video surveillance,  
8 right?

9 A Yes, sir, I do.

10 Q You did a lot of video surveillance during this  
11 investigation, right?

12 A Yes, sir.

13 Q Why do you do video surveillance? What is the purpose  
14 of that?

15 A You mean actually recording it?

16 Q Right. There are two kinds of surveillance, right?  
17 There is live eyes where you've got agents watching. And then  
18 there is video where you have got tape, right? It's not tape  
19 anymore but it's a photographic file, right?

20 A That's right.

21 Q And you guys did some photographic video surveillance,  
22 right?

23 A Yes, sir.

24 Q And who did you look at?

25 A Who did I look at?

1 Q Well, what location is probably a better question. What  
2 location?

3 A Our primary focus was a house on East 92nd Place. I  
4 think 8416 East 92nd Place. Because that was a house where a  
5 lot of people would congregate. And they would -- it was used  
6 as a stash house by this organization.

7 Q And that was owned by Mr. Corredor?

8 A No, that was Vincent.

9 Q Jackson?

10 A Vincent Charles.

11 Q That's right. The that was a remote video, right?

12 A Yes.

13 Q Where you could turn it on and move it around remotely?

14 A Yes.

15 Q Did you do any other video surveillances during  
16 operation Blockbuster that you can recall?

17 A Took a lot of pictures, video surveillance, but I can't  
18 recall any. Maybe at Mr. Corredor's house. But not Mr.  
19 Dunn's.

20 Q You did not do any video or photographic surveillance of  
21 Mr. Dunn's address at 8717 Kentucky?

22 A I don't believe so.

23 Q And that was a house that he was renting to someone,  
24 right?

25 A I have no idea what his relationship to that property

1 was.

2 Q Well, he had a separate residential address, correct?

3 A That's my understanding.

4 Q On Crisp Street?

5 A That's my understanding.

6 Q Right. But you didn't survey the Crisp residence of Mr.  
7 Dunn either, did you?

8 A No, sir.

9 Q And you did a lot of what you call trash pulls during  
10 this investigation, right?

11 A Yes, sir.

12 Q And what is trash pulls?

13 A Picking up somebody's trash that they leave curbside and  
14 digging it to see if you can find anything of evidentiary  
15 value.

16 Q It's a glorious job, no doubt.

17 A I'm sorry?

18 Q It sounds like a glorious job.

19 A It has it's moments.

20 Q I'm sure it does.

21 And you did several trash pulls during the course of  
22 this investigation, right?

23 A Yes, sir.

24 Q Do you remember which addresses you did them for?

25 A Mr. Corredor's mother in law's house. There was a trash

1 pull at Vincent Charles's house. I don't even know that there  
2 were several trash pulls. Maybe a few different trash pulls.  
3 Those are the only two that come to mind right now.

4 Q But you didn't do any at Mr. Dunn's 8717 Kentucky  
5 address, did you?

6 A Didn't do one at his house. Didn't do one at Mr.  
7 Corredor's house?

8 Q You used vehicle tracking devices, right?

9 A Yes, sir.

10 Q Mobile tracking devices that you put on different  
11 vehicles and you can see on the computer where the vehicles  
12 were going, correct?

13 A Yes, sir.

14 Q And which vehicles did you track during that method of  
15 operation Blockbuster?

16 A Um -- Mr. Corredor's was the primary focus.

17 Q Okay. Were there any other vehicles that you tracked  
18 during the course of your investigation electronically?

19 A There was another associate, I don't remember his name.  
20 They called him by the nickname, Bay Bay. I'm sure there were  
21 others that aren't coming to mind right off the top of my  
22 head.

23 Q But you never did one for the '74 Chevy Caprice, that is  
24 the subject of this forfeiture action, right?

25 A No, sir.

1 Q And you never did one for the 2005 -- and by one, I mean  
2 a electronic tracking, you never did electronic tracking for  
3 the 2005 Corvette either?

4 A No, sir.

5 Q Did you ever do one for the silver BMW registered to  
6 Renee Dunn?

7 A No, sir.

8 Q And you never did any electronic vehicles associated  
9 with Mr. Dunn, correct?

10 A No, sir.

11 Q And this operation Blockbuster, understandably, resulted  
12 in a long trial, right?

13 A Two trials, yes, sir.

14 Q Yes. And you testified for the government during the  
15 criminal trial of Mr. Dunn and some of his codefendants,  
16 right?

17 A Yes, sir.

18 Q And you were sitting at the prosecution table desk for  
19 most of the trial?

20 A Yes, sir.

21 Q And you stayed and watched most of the trial, correct?

22 A That's correct.

23 Q You were present for the whole thing, right?

24 A Yes, sir.

25 Q Soup to nuts. And about 12 law enforcement agents, 12

1 different law enforcement agents testified during the course  
2 of that trial, does that sound right to you?

3 A That sounds about right.

4 Q I'm not going to bore you by going through them. But  
5 there was a lot of law enforcement officers from different  
6 agencies, right?

7 A Yes, sir.

8 Q It was an interagency effort, correct?

9 A Yes, sir.

10 Q Do you recall that none of those witnesses, none of  
11 those law enforcement officers during the course of that trial  
12 ever testified that Mr. Adrian Dunn used that Chevy Caprice to  
13 buy or sell drugs, did they?

14 A No, they did not.

15 Q And none of those witnesses during the entire course of  
16 the trial testified that Mr. Dunn used the Corvette to buy or  
17 sell drugs, did they?

18 A No, sir.

19 Q And during the course of the trial none of those law  
20 enforcement officers testified that Mr. Dunn used the '74  
21 Chevy Caprice to transport proceeds from drug sales, did they?

22 A No, sir.

23 Q And during that trial none of those law enforcement  
24 witnesses testified that Mr. Dunn used the Corvette to  
25 transport proceeds from drug sales, did they?



1 A No, sir.

2 Q And none of those witnesses, and I'm talking about the  
3 law enforcement witnesses testified during the course of the  
4 trial that that \$41,000 dollars found in the trunk of Mr.  
5 Dunn's Caprice was drug proceeds, did they?

6 A No, sire.

7 Q You also in addition to the 12 law enforcement officers  
8 had four separate witnesses who had turned state's evidence,  
9 right?

10 A Yes, sir.

11 Q Including Mr. Alejandra Corredor, Keith Rayford,  
12 Terrance Harris, and Joel Ravara, right?

13 A Yes, sir. I think there was one more, but I could be  
14 mistaken.

15 Q The point is there were several state witnesses that  
16 turned state's witnesses and gave testimony against people  
17 they testified they had previously been in drug business with,  
18 correct?

19 A Yes.

20 Q And none of those witnesses, including Mr. Corredor ever  
21 testified that Mr. Dunn used that Chevy Caprice to buy or sell  
22 drugs, did they?

23 A No, sir.

24 Q And none of those witnesses in the over 800 pages of  
25 transcript testified that Mr. Dunn ever used his Corvette to

1 buy or sell drugs, did they?

2 A No, sir.

3 Q And likewise, none of those state witnesses -- I should  
4 probably say government's witnesses, testified that Mr. Dunn  
5 ever used that Corvette to transport drug proceeds, did they?

6 A No, sir.

7 Q And none of those witnesses testified that Mr. Dunn used  
8 the Caprice to transport drug proceeds, did they?

9 A No, sir.

10 Q And none of those witnesses testified that that \$41,000  
11 dollars in the trunk of the Caprice was from proceeds of drug  
12 sales, did they?

13 A No, sir.

14 Q Let's talk about the Caprice a little bit. Out of the  
15 100 of hours of taped audio surveillance testimony. How many  
16 times is the Caprice mentioned?

17 A It's not mentioned.

18 Q It's not mentioned at all, is it?

19 A No, sir.

20 Q And there is no audiotape evidence of Mr. Dunn ever  
21 using the Caprice to buy or sell drugs, right?

22 A No, sir.

23 Q There is no tape where Mr. Dunn says I'm going to hop in  
24 the Caprice and go sling some cocaine?

25 A No, sir.

1 Q Out of the hundreds of hours of videotape testimony --  
2 excuse me. Strike that. Out of all of the video surveillance  
3 and photographs taken, there is no photographic evidence of  
4 Mr. Dunn using the Caprice to sell or buy drugs, is there?

5 A No, sir.

6 Q As a matter of fact, I don't think that Mr. Dunn showed  
7 up on any of the photographic evidence at all during the  
8 entire course of the case in the investigation, did he?

9 A No, sir.

10 Q And as far as you know that Caprice was parked in the  
11 garage at the 8717 West Kentucky residence, right? The entire  
12 time?

13 A Yes, sir, it could have been.

14 Q You never saw it move out did you?

15 A No, he wasn't the primary focus of the investigation.

16 Q Yeah, Mr. Dunn wasn't the primary focus, was the?

17 A No, sir.

18 Q And you hadn't gathered a lot of information about  
19 Mr. Dunn at that point when you had to execute the warrants,  
20 had you?

21 A DEA had a separate investigation on Mr. Dunn.

22 Q Right. Officer Francis, you met during -- I think it is  
23 James Francis, is that correct? Does that ring a bell?

24 A No, sir.

25 Q Scott Francis. I'm sorry, my colleague corrects me.

1       A       No, he's the co-case agent with me. He works for  
2 Homeland Security Investigations. DEA had a separate  
3 investigation on Mr. Dunn.

4       Q       Fair enough. And you guys weren't really targeting  
5 Mr. Dunn at all even, right?

6       A       Well, I mean we were targeting the organization.  
7 Mr. Corredor was obviously the head of the local organization.  
8 He was receiving drugs from Mexican drug cartels so we're  
9 looking at the Mexican drug cartels, we're looking at Mr.  
10 Corredor. And then we are looking at all the people  
11 Mr. Corredor was distributing the cocaine to. So Mr. Corredor  
12 and the Mexican cartel, we don't generally move down in our  
13 investigations, we move up. That's our goal. That's our  
14 objective to go as high up as we can. So Mr. Dunn was just  
15 another customer of Mr. Corredor so he wasn't a big focus of  
16 the investigation.

17      Q       Fair enough. And you actually had to end that  
18 investigation prematurely, right?

19      A       Yes, sir.

20      Q       Because you had indication there was going to be some  
21 violence.

22      A       That's correct.

23      Q       And it wasn't safe for the officers, it wasn't safe for  
24 people on the streets so you had to execute those warrants. I  
25 think your phrase was, earlier than what you were expecting

1 to, right?

2 A That's right.

3 Q And at that point you had limited information on Mr.  
4 Dunn, right?

5 A It depends on what you mean by limited information.

6 Q Let me put it this way, if you would've had an optimal  
7 situation, you would have continued to developing information  
8 on Mr. Dunn, correct?

9 A He wasn't the primary focus of the investigation.

10 Q So you didn't really care about Mr. Dunn?

11 A No, sir, I didn't.

12 Q Fair enough. Let's talk about the Corvette. Same setup  
13 as with the Caprice. Out of the hundreds of hours of all of  
14 the conversations recorded by the wiretaps, is there any  
15 mention of the Corvette?

16 A No, sir.

17 Q And so likewise there was audiotape evidence, there is  
18 zero evidence of Mr. Dunn ever using that Corvette to buy or  
19 sell drugs, correct?

20 A Well, there are statements made by Mr. Corredor.

21 Q Let's focus on -- we'll deal with that at a certain  
22 point, but I want to focus on audiotape evidence that you took  
23 during the course of your surveillance. Because you guys had  
24 hundreds of hours, right?

25 A There is no audiotape evidence regarding the Corvette.

1 Q Fair enough. And there isn't any photographic or video  
2 evidence of the Corvette being used to buy or sell drugs, is  
3 there?

4 A No, sir.

5 Q And there no videotaped or audiotape evidence of the  
6 Corvette being used to transport drug proceeds, is there?

7 A No, sir.

8 Q In the course of your investigation, as we talked about  
9 because you ended it a little prematurely, and as you said,  
10 Adrian Dunn really wasn't who you were looking at, you didn't  
11 do any checks to see what vehicles Adrian Dunn owned, did you?

12 A It's difficult to say. I mean, part of our  
13 investigations, his house -- the house at 8717 Kentucky was an  
14 early focus of the investigation. It involved -- there was  
15 information from a tracker on Mr. Corredor's vehicle that led  
16 us to that address. And the DEA surfaced about Mr. Dunn. So  
17 at that point we kinda back off Mr. Dunn. But I'm sure there  
18 were vehicles that we identified at that residence that we ran  
19 checks on. But I can't tell you that. But it is standard  
20 practice as we identify residences connected to investigation,  
21 we get license plates and we get the information regarding who  
22 the registered voters are, and the addresses. We keep a  
23 spreadsheet of that information. So the vehicles could be on  
24 a spreadsheet, but I can't tell you at this point without  
25 going back to look at that information.

1 Q In fact, during the investigation you had Mr. Dunn,  
2 quote unquote, associated with the silver BMW, right?

3 A Yes, I believe that is correct.

4 Q And also associated with the dark SUV, correct?

5 A I'm not sure.

6 Q You're not? Okay. But my point is, you, during the  
7 investigation never associated him with either a '74 Caprice  
8 or a 2005 Corvette, correct?

9 A Not until the very end of the investigation.

10 Q Right. Not until the warrants were executed and you  
11 found these vehicles for the first time, right?

12 A Right.

13 Q As a matter of fact the first time you became aware that  
14 he even owned these vehicles was after the warrants were  
15 executed, right?

16 A Yes, sir. They came up earlier on my spreadsheet like I  
17 was saying before.

18 Q Fair enough. So you didn't do any background checks  
19 before you seized the vehicles and before the June 12th,  
20 warrants were executed to determine whether -- excuse me. How  
21 Mr. Dunn obtained either the Caprice or the Corvette, did you?

22 A No, sir.

23 Q You don't know what he paid for them, do you?

24 A No, sir.

25 Q You don't how he paid for them?

1 A No, sir.

2 Q You don't know if he paid cash?

3 A No idea.

4 Q You don't know if he got 0.1 financing?

5 A Could have.

6 Q Could have. Don't know if he had any trade-ins? Did  
7 you do any checks before the warrants were executed to see  
8 what legal businesses Adrian Dunn had?

9 A What vehicle businesses?

10 Q No, I'm sorry. Legal businesses?

11 A Legal businesses?

12 Q Right. What he did for the living other than the  
13 alleged conspiracy to distribute?

14 A There was some work done on that. I'm not personally  
15 aware of what it was. I have some confusion as to what he  
16 actually did for a living.

17 Q Fair enough. But you have no basis to say that he  
18 didn't work several legitimate jobs?

19 A I do not.

20 Q Fair enough. You weren't aware that he ran a vehicle  
21 towing business, correct, at the time you executed the  
22 warrants?

23 A I had heard something about a towing business.

24 Q That rings a bell? Okay. Did you know that he ran a  
25 car detailing business?



1 A No, sir.

2 Q Were you aware as to whether or not Mr. Dunn bought and  
3 sold used vehicles to generate income?

4 A No, sir.

5 Q And were you aware at the time you executed the  
6 June 12th, 2009, warrants whether Mr. Dunn did remodeling  
7 work as well?

8 A No, sir.

9 Q So basically you don't know what Adrian Dunn's income  
10 from non-drug trafficking resources would've been in 2009?

11 A I do not.

12 Q So it is impossible for you as you sit here today and  
13 say that he would've purchased, he would've had to purchased  
14 either one of those vehicles using drug proceeds, right?

15 A I can't say that.

16 Q Fair enough. Now, let's talk about the 8717 address.  
17 That's the address where the Caprice was located where  
18 Exhibits 6, 7, 8, 9, and 10 were identified, correct?

19 A That's correct.

20 Q And there was surveillance conducted of that residence  
21 prior to the execution of the search warrants on June 12th,  
22 2009, correct?

23 A Yes, sir.

24 Q About how long was that surveillance conducted, do you  
25 remember?

1 A How long?

2 Q Right. Just before June 12th, 2009, did yours or one  
3 of your participating agencies have eyes on that particular  
4 property?

5 A I only remember one specific instance and that was I  
6 believe in May. That one sticks out in my mind because there  
7 were some phone calls made and Mr. Corredor was supposed to go  
8 pick up some money at that address, and Mr. Dunn's associate  
9 noticed one of our cars doing surveillance in the  
10 neighborhood. And so they changed plans and had Mr. Dunn's  
11 associate Mr. Miles take money to Vincent Charles house at  
12 8416 East 92nd Place. That's the one surveillance -- we  
13 didn't do a lot of surveillance at that house.

14 Q Sure.

15 MR. CARPENTER: I appreciate the thoughtfulness of  
16 the answer, but I've got to move to strike most of that  
17 answer, Your Honor. I just asked how long they had been doing  
18 the surveillance, not the subject of conversations relating to  
19 that. So I move to strike that as nonresponsive, Your Honor.

20 MR. BOHLING: I would object to the motion to  
21 strike. I think that was a clearly responsive answer to the  
22 questions posed. He essentially asked for hearsay, and got  
23 it.

24 MR. CARPENTER: I think I asked how long they had  
25 been surveying the place.

1 THE COURT: The objection is overruled.

2 BY MR. CARPENTER:

3 Q So that was in May. Warrants were executed in June. So  
4 was there surveillance for about six weeks on the residence?

5 A We did limited surveillance. I said that was the one  
6 surveillance -- I was just trying to put it in context.

7 Q Okay.

8 A That's the one surveillance I remember.

9 Q So it came and went?

10 A It was short-lived because we were basically --  
11 surveillance was made.

12 Q Okay. But while you were doing surveillance on that  
13 property, you had eyes on the property 24 hours a day?

14 A No, sir.

15 Q No? How long would surveillance go?

16 A That was the only instance I remember. And that  
17 surveillance was short-lived a couple hours because  
18 surveillance was made so. And I don't think there were any  
19 more attempts to do surveillance at that address after that  
20 date. Before there were drive-bys where we checked on the  
21 residence. I can't tell you how many times we drove by.

22 Q Okay.

23 A But there were no long protracted drawn out surveillance  
24 of that residence. I know DEA actually did a lot more work on  
25 that address. They had a lot more information on Mr. Dunn and

1 that address than I did or we did.

2 Q Okay. So was the DEA doing separate surveillance on  
3 that address in addition to Homeland Security?

4 A They had an investigation on Mr. Dunn and we bumped in  
5 to other during our separate investigations. And they  
6 basically backed off because we had a wiretap. It kind of --  
7 we were intercepting Mr. Dunn. So they backed off their  
8 investigation.

9 Q Wiretap trumps, basically?

10 A Yes.

11 Q Fair enough. During the entirety of that surveillance  
12 and the drive-bys either by you, your organization, or by the  
13 DEA, no one ever once saw Adrian Dunn driving that '74 Caprice  
14 to that address?

15 A Not to my knowledge.

16 Q And no one ever saw him during that entire course of  
17 surveillance driving that 2005 Corvette to the address,  
18 correct?

19 A Not to my knowledge.

20 Q And that surveillance and the drive-bys never once saw  
21 Adrian Dunn selling or buying drugs in either of those  
22 vehicles during the surveillance?

23 A No, sir.

24 Q And you never once even saw -- and by you, I mean the  
25 surveillance. The surveillance never once saw Adrian Dunn

1 even present at that 8717 Kentucky address once, correct?

2 A I can't. I can't answer that with 100 percent  
3 certainty.

4 Q Hold on one second.

5 A Not on our investigation, perhaps the DEA investigation.

6 Q And none of that information from the DEA is going to be  
7 presented during the government's case in this hearing, is it?

8 A No, sir.

9 Q And none of that surveillance at the 8717 Kentucky  
10 residence ever saw anyone driving the 2005 Corvette there, did  
11 they?

12 A No, sir.

13 Q And none of that surveillance never saw anybody, much  
14 less Mr. Dunn driving the '74 Caprice, did it?

15 A No, sir.

16 Q In fact, Adrian Dunn was never photographed once in this  
17 case at all in either of those vehicles, was he?

18 A No, sir.

19 Q He was never observed by any agent from any agency of  
20 which you are aware possessing drugs in either vehicle?

21 A No, sir.

22 Q And is never observed by agents from either agency  
23 transporting drug proceeds in either vehicle, correct?

24 A No, sir.

25 Q There is no way that you can say that Mr. Dunn used

1 either vehicle to transport drug proceeds, correct?

2 A I cannot say that.

3 Q And you can't say that Mr. Dunn used either vehicle to  
4 buy or sell drugs, correct?

5 A I cannot say that, no.

6 Q And there is likewise -- strike that.

7 And in terms of the cash found inside the trunk on  
8 direct examination in the back of the '74 Caprice, you don't  
9 know, and by you I mean the collective government agencies --  
10 let me do this. You don't know personally how that cash got  
11 in the back of the trunk, do you?

12 A No, sir.

13 Q You don't know who put it there, do you?

14 A No, sir.

15 Q You don't know personally where that cash came from?

16 A No, sir.

17 Q All right. Let's talk about the search of the 8717  
18 Kentucky address. You actually did not assist in the search  
19 of that address, did you?

20 A I did not assist. I was just -- I was there for some of  
21 the search.

22 Q You, in fact, were making the rounds in other locations  
23 that night. You had four search warrants that you were  
24 delivering to different parts of the city, correct?

25 A Yes, sir.

1 Q And you weren't in charge of the search at 8717  
2 Kentucky, were you?

3 A I was not.

4 Q As a matter of fact, you just delivered the search  
5 warrant, correct?

6 A I did, but I was there for a short time.

7 Q You stayed outside, didn't you?

8 A I went inside and I was in the garage. In the picture  
9 of the Caprice you can see my shoes in the photograph. So I  
10 was pretty close.

11 Q Do you remember giving testimony during the suppression  
12 hearing in this case?

13 A Do I remember?

14 Q Right.

15 A Yes, I remember.

16 Q You were a sworn witness at the suppression hearing,  
17 correct?

18 A Yes, sir.

19 Q And you were placed under oath, correct?

20 A Yes, sir, always.

21 Q And you were sworn to tell the truth?

22 A Yes.

23 Q Which you did to the best of your abilities, correct?

24 A Yes, that's right.

25 Q And you were asked questions during the course of the

1 suppression hearing about the execution of the warrant at 8717  
2 Kentucky, do you remember that?

3 A No, sir, I don't remember.

4 Q You don't remember that?

5 A No.

6 Q Would it refresh your recollection if I were to show you  
7 some of your testimony about the 8717 warrant execution?

8 A Sure, that would be fine.

9 Q I am showing you what has been marked for identification  
10 as Exhibit No. 12.

11 MR. CARPENTER: Your Honor, can I approach the  
12 witness?

13 THE COURT: You may.

14 BY MR. CARPENTER:

15 Q And if I could ask you to look at Page 55, lines 2  
16 through 13.

17 A Yes, sir.

18 Q Does that refresh your recollection about your testimony  
19 at the suppression hearing about the execution of the search  
20 warrants at 8717 Kentucky on June 12th, 2009?

21 A Yes, sir.

22 Q And that indicates that you testified, does it not, that  
23 you delivered the warrant and you remained outside the house?

24 A That's what it says.

25 Q And it says you didn't participate in the search of that



1 residence, correct?

2 A And that's what I testified to today also. I didn't  
3 participate in the search.

4 Q Well, you said you went inside, but at the suppression  
5 hearing you indicated you remained outside the whole time,  
6 correct?

7 A That's what it says. I was younger, my mind was fresher  
8 at that point.

9 Q It's eight years ago, I understand.

10 And if I could also direct your attention to Page 43  
11 of Exhibit 12, lines 21 through 23, I believe. Actually 13 to  
12 21.

13 A Page 43, lines 13 to 21?

14 Q Well, let me get there with you. Strike that, I'm  
15 sorry. Page 45, a lot of 40's. Lines 13 to 21.

16 A Yes, sir.

17 Q Can you take a look at that real quick?

18 A Yes, sir. Page 43, lines 13 through 21?

19 Q 45, lines 13 to 21. I'm sorry.

20 A Okay.

21 Q That again indicates that you weren't hands on involved  
22 -- sorry. Does that refresh your recollection about your  
23 testimony at the suppression hearing about the search of the  
24 trunk of the Caprice at 8717 Kentucky on June 12th, 2009?

25 A That is exactly what I am testifying to now.

1 Q That indicates that you were not involved in the search,  
2 correct?

3 A That's right.

4 Q You stood outside while other people executed the  
5 search, correct?

6 A I was there for the search for the Caprice. I wasn't  
7 hands-on. I stood there and observed.

8 Q Well, you weren't even in the garage, where you?

9 A Yes, I was.

10 Q I'm sorry. I was standing out -- can you read lines 19  
11 through 20 aloud?

12 A When you open the garage door, I mean it is semantics  
13 there. The garage door opens, the back of the car is right  
14 there. If I'm standing right at the entry to the garage  
15 looking in the trunk.

16 Q How far were you standing outside the garage?

17 A You can see my shoes in the picture right by the back  
18 end of the car.

19 Q How do you know those are you shoes?

20 A I just wore them the other day. I still have the same  
21 shoes.

22 Q You've got old shoes like I do.

23 A I'm using them to cut the grass now though.

24 Q Well, we all rotate them down. I know how that works.

25 THE COURT: How much more time do you have with this

1 witness on cross, counsel?

2 MR. CARPENTER: I think I've only got about 15 or 20  
3 minutes. Do you want to take a break Your Honor or should we  
4 roll through it?

5 THE COURT: Yeah, I do. Why don't we take about a  
6 10 minute break and then we will come back out and we will  
7 have you finish up.

8 MR. CARPENTER: Thank you, Your Honor.

9 (THEREUPON, a short recess was had; WHEREUPON, the following  
10 proceedings were had.)

11 THE COURT: The Court will remind the witness that  
12 you are still under oath. Counsel.

13 Did you say 20 minutes?

14 MR. CARPENTER: Ten.

15 THE COURT: Okay.

16 BY MR. CARPENTER:

17 Q Agent King, we just have a couple more matters to cover  
18 before we are done. I appreciate it. Question: When you  
19 executed the warrant on June 12th, 2009, at the 8717  
20 property, at that time your agency had identified the person  
21 identified as A.D. in recordings as Adrian Dunn at that point,  
22 had you?

23 A Yes, I believe we had.

24 Q Okay.

25 A I believe we had.

1 Q At what point did that occur?

2 A I'm sorry.

3 Q At what point did that occur?

4 A I can't tell you, it's been too long.

5 Q Let's talk about the cash. And if I could, could I have  
6 the government put up one of the exhibits showing the cash  
7 that is already in evidence?

8 MR. BOHLING: They are in our binder. So for  
9 example, here is Exhibit 11, here is Exhibit 10, and the Judge  
10 will have those.

11 MR. CARPENTER: I will just pull it out of my binder  
12 here.

13 MR. BOHLING: Not on a computer today, I'm afraid.

14 THE COURT: Are you looking for the photographs?

15 MR. CARPENTER: I am. I am. I've got them right  
16 here.

17 THE COURT: Is that for the witness or for me?

18 MR. CARPENTER: It's for the witness, Your Honor.

19 THE COURT: Okay.

20 BY MR. CARPENTER:

21 Q All right. We testified -- we established that you were  
22 standing outside the garage at the time the trunk of the '74  
23 Caprice was open in the garage at the 8717 Kentucky property,  
24 correct? And they found inside the trunk a plastic dollar  
25 general store bag, correct?

1 A Yes, sir.

2 Q And it was just sitting there in plain view in the back  
3 of the trunk, wasn't it?

4 A It was kind of tucked behind the speaker box, tucked to  
5 the side of it.

6 Q It wasn't hard to see when you opened the trunk, was it?  
7 Or do you know were you close enough to even tell?

8 A I can't tell you how easy it was to see.

9 Q Well, let's take a look. I'm going to use Government's  
10 Exhibit No. 8 which is already in evidence. And I'm going to  
11 get this out. You've got a copy of it up there, correct,  
12 Agent King?

13 A Yes.

14 Q Can you take a look at Government Exhibit No. 8. You  
15 testified that that shows the bag containing cash that was  
16 found in the trunk of the '74 Caprice when the search was  
17 executed, correct?

18 A Yes, sir.

19 Q And looking down this is from taken from a perspective  
20 of about person height looking down into the trunk, correct?

21 A Yes, sir.

22 Q And you can see the bright yellow bag sitting right in  
23 the trunk, not tucked very far behind the speaker at all,  
24 right?

25 A Yes, sir.

1 Q It is plainly visible at the moment you open the trunk,  
2 isn't it?

3 A Yes, sir, but from the way I remember it was tucked  
4 further behind the speaker. I think someone pulled it out to  
5 get a shot of it.

6 Q So this is not an accurate picture then of how you  
7 found.

8 A I didn't find the money.

9 Q You weren't involved in the search, were you?

10 A I was just there. I observed it. You would have to get  
11 -- I couldn't testify as to how it was concealed. That is not  
12 the way I remember it, but I think it was tucked more behind  
13 the speaker.

14 Q Is there any photographic evidence of this bag tucked  
15 more behind the speaker?

16 A Maybe that is how it was.

17 Q Wouldn't your agency have taken contemporaneous  
18 photograph of how you found the evidence before you started  
19 moving it around?

20 A Perhaps that's how it was and I'm mistaken.

21 Q Fair enough. So it is pretty much in plain site when  
22 you open the trunk, isn't it?

23 A Yes, sir.

24 Q And inside that Dollar General bright yellow bag is US  
25 currency, right?

1 A Yes, sir.

2 Q And you didn't count that currency, did you?

3 A The bank counts it. We don't count the cash. We take  
4 it to the bank that way there are no mistakes as far as  
5 counting.

6 Q You've got no first-hand knowledge of what that currency  
7 was, do you?

8 A I have a count sheet from the bank.

9 Q The bank told you?

10 A Broken down into denominations and the total amount.

11 Q Fair enough. Your investigation during operation  
12 Blockbuster recovered currency being transported by the same  
13 drug conspiracy previously, didn't you?

14 A I'm sorry?

15 Q During the course of operation Blockbuster, your agency  
16 intercepted drug proceeds in the form of cash being  
17 transported by vehicles by members of the conspiracy  
18 previously, correct? Particular I am talking about in May  
19 6th, of 2009, you began surveilling a Toyota sienna minivan,  
20 do you remember that?

21 A Yes, sir.

22 Q And you observed it parked at an abandoned house at 920  
23 Ewing, correct.

24 A It wasn't an abandoned house.

25 Q But it was parked at a house at 920 Ewing?

1 A Yes, sir.

2 Q And you had it under surveillance, correct?

3 A Yes, sir.

4 Q And you could see, could you not that there was quite a  
5 bit of work going on on this minivan?

6 A Yes, sir.

7 Q They were taking things on and off and doing something  
8 correct?

9 A Yes, sir.

10 Q And it was a little far for you to see exactly what they  
11 were doing at the time of the surveillance, right?

12 A Yes, sir.

13 Q But you knew they were doing something?

14 A Yes, sir.

15 Q And this is part of the Corredor drug conspiracy, right?

16 A Correct.

17 Q And then you followed the van when it left the Ewing  
18 address, correct?

19 A That's correct.

20 Q And you intercepted the van after a while and stopped it  
21 on the highway, right?

22 A Yes, sir.

23 Q And you found \$653 in US currency inside that minivan,  
24 correct?

25 A \$653,000, yes.



1 Q I'm sorry. You're right. Did I say \$653?

2 A Yes, sir.

3 Q I'm sorry. And that \$653,000 dollars that you found was  
4 it sitting in the trunk of the minivan?

5 A No, sir. But the circumstances were totally different  
6 too.

7 Q Well, as a matter of fact where was that money located  
8 inside the sienna minivan?

9 A A false compartment in the firewall accessed through the  
10 fender, taking the fender off.

11 Q I'm going to show you some pictures. Before I do,  
12 basically, what they had done is they had cut out a hole in  
13 the frame of the vehicle, hadn't they?

14 A No, sir. It wasn't in the frame. Through the firewall  
15 there was a rectangular box that ran the full length behind  
16 the dashboard.

17 Q Was it the quarter panel, the right front quarter panel?

18 A Yes.

19 Q And they cut it out and then stuffed the currency inside  
20 the quarter panel itself, correct?

21 A Yes, sir. It was in this box accessible behind the  
22 front quarter panel.

23 Q And it was a big gap, it was about over 60 inches deep,  
24 correct?

25 A I believe it ran from side to side.

1 Q And it was welded shut, correct?

2 A No, sir.

3 Q It wasn't welded shut?

4 A No, I think that was just some temporary -- a plate was  
5 put over there but it wasn't welded.

6 Q It was a plate with some sort of adhesive on it? I've  
7 got what is marked for identification as Exhibit No. 23. I'm  
8 handing a copy to the government's counsel. Can I approach  
9 the witness, Your Honor?

10 THE COURT: You may.

11 BY MR. CARPENTER:

12 Q Agent King, do you recognize what is contained in that  
13 photograph?

14 A Yes, sir.

15 Q And what is that?

16 A That is the minivan you were talking about from which we  
17 seized \$653,000.

18 Q And is that a fair and accurate representation of the  
19 minivan that you seized that contained the \$653,000 dollars in  
20 currency?

21 A It appears to be, yes.

22 MR. CARPENTER: Your Honor, we offer Exhibit 23 into  
23 evidence.

24 MR. BOHLING: No objection.

25 THE COURT: Plaintiff's Exhibit 23 shall be

1 admitted.

2 (THEREUPON; Plaintiff's Exhibit No. 23 was then  
3 admitted into evidence by the Court.)

4 BY MR. CARPENTER:

5 Q And I'm holding hat has been marked for identification  
6 as Exhibit No. 24.

7 MR. CARPENTER: Can I approach the witness, Your  
8 Honor?

9 THE COURT: You may.

10 BY MR. CARPENTER:

11 Q You know what to save time let me -- I have one more  
12 exhibit -- two more, three more. Exhibit 25, 26, and 27. I'm  
13 giving copies to the government counsel.

14 MR. CARPENTER: If I could approach the witness  
15 again, Your Honor? And I have Exhibit 28 as well.

16 BY THE WITNESS:

17 A Is there a 26?

18 BY MR. CARPENTER:

19 Q I may not have given you a 26. Hold on one second.

20 Agent King, do you recognize what is contained in  
21 Exhibit No. 25?

22 A Yes, sir.

23 Q What is that a photograph of?

24 A That is the panel on the Toyota sienna minivan. You  
25 take the fender off and that's the panel that accesses the

1 false compartment where \$653,000 dollars was concealed.

2 Q And that is in the compartment enclosed form, correct?

3 A Yes.

4 Q And do you recognize -- is that a fair and accurate  
5 representation of the panel that you found on that Toyota  
6 minivan?

7 A Yes, sir.

8 THE COURT: Let me ask, what exhibits does he have?

9 MR. CARPENTER: He has 25, 26, 27, and 28 Your  
10 Honor.

11 THE COURT: Did you not say 24?

12 MR. CARPENTER: And 23 as well.

13 THE WITNESS: I have 23 through 28, Judge.

14 MR. CARPENTER: I don't think I gave him 24.

15 THE COURT: 23 was admitted.

16 MR. CARPENTER: Yep.

17 THE COURT: I thought you said 24, 25, 26.

18 MR. CARPENTER: I think I gave him 24 as well.

19 THE COURT: Have him look at them all.

20 MR. CARPENTER: Yeah. And save some time.

21 THE COURT: Yes.

22 BY MR. CARPENTER:

23 Q Can you take a look and see if those accurately  
24 represent that Toyota sienna we talked about and if they are  
25 fair and accurate representations?

1 A Yes.

2 Q Great.

3 MR. CARPENTER: Your Honor, we would offer 24, 25,  
4 26, 27, and 28 into evidence.

5 MR. BOHLING: No objection.

6 THE COURT: Plaintiff's Exhibits 24 through 28 shall  
7 be admitted.

8 (THEREUPON; Plaintiff's Exhibit Nos. 24 and 28 were  
9 then admitted into evidence and published to the Court.)

10 MR. CARPENTER: And can we publish these, Your  
11 Honor?

12 THE COURT: You may.

13 BY MR. CARPENTER:

14 Q I'm pulling up Exhibit No. 23, and I think we have  
15 already established that is the Toyota sienna minivan that you  
16 intercepted that contains \$653,000 in US currency, correct?

17 A Correct.

18 Q And let's see 24. What does that show? Is that the  
19 hidden compartment within the right front quarter panel of the  
20 vehicle that you entered?

21 A Yes, sir.

22 Q And did you open that panel once you had intercepted it?

23 A I did not personally.

24 Q Can we see No. 25 please. And is that another view of  
25 the same quarter panel?

1 A Yes, sir, just a close up.

2 Q And do you know what it is sealed with?

3 A I do not.

4 Q Okay. Exhibit No. 26. And this is the same quarter  
5 panel and the same Toyota sienna with the cover removed,  
6 correct?

7 A Yes, sir.

8 Q And agents, not necessarily yourself, but agents  
9 associated with your investigation after they had impounded  
10 the vehicle, stripped it down and found the secret  
11 compartment, right?

12 A Yes, sir.

13 Q And they opened the secret compartment, correct?

14 A Yes, sir.

15 Q And inside they saw this, correct?

16 A Yes, sir.

17 Q And what is that inside?

18 A US currency, bundles of US currency.

19 Q Approximately \$653,000 dollars worth, right?

20 A Yes, sir.

21 Q No. 27. And is this an example of the currency taken  
22 out of the hidden compartment in the Toyota sienna?

23 A Yes, it is.

24 Q And you can see that it is wrapped in saran wrap, isn't  
25 it?

1 A Yes, sir.

2 Q And if you can see it in the last picture, but I think  
3 you can see that it was also in addition wrapped in saran wrap  
4 and secured with duck tape as well, correct?

5 A Yes, sir.

6 Q Duck tape is the silver stuff that we saw earlier,  
7 correct?

8 A Yes, sir.

9 Q We are looking now at Exhibit No. 28. That another view  
10 of the currency saran wrapped and duct taped. It's very  
11 tight, isn't it?

12 A Yes, sir.

13 Q They are trying to wedge as much as they can in,  
14 correct?

15 A That's correct.

16 Q That's a lot of effort to hide currency, isn't it?

17 A Yes, sir.

18 Q It's a very deliberate system of hiding currency for  
19 transportation, isn't it?

20 A Yes, sir.

21 Q It's not loose, is it?

22 A No, sir.

23 Q Tightly wrapped, correct?

24 A Yes, sir.

25 Q Not in plain sight in the trunk or the interior of the

1 vehicle, correct?

2 A That's right.

3 Q Now, the Chevrolet Caprice was searched top to bottom  
4 when you executed the search warrant, correct?

5 A I would believe so.

6 Q That's true, you were outside. I beg your pardon. When  
7 the Chevrolet Caprice was impounded though, it was searched  
8 top to bottom for false compartments, correct?

9 A Yes.

10 Q You would have found a false compartment containing  
11 cash, drugs or contraband if it was in the Caprice, correct?

12 A No, sir.

13 Q You wouldn't have?

14 A No, not necessarily. It would've been very difficult to  
15 find.

16 Q Fair enough. But you would've looked for it, correct?  
17 Your agency would have looked for it?

18 A Yes.

19 Q And you didn't find anything like that in the Caprice?

20 A No.

21 Q No secret compartments?

22 A No.

23 Q No money hidden inside the quarter panels of the body or  
24 the fire space of the car, correct?

25 A No, sir.



1 Q And the cash in the Dollar General store bag, that was  
2 loose, wasn't it?

3 A I can't say.

4 Q It certainly wasn't saran wrapped and duck taped, was  
5 it?

6 A No, sir.

7 Q Very different than what we saw from this mode of  
8 transportation, correct?

9 A That's correct.

10 Q Fair to say the method of storing the money that you  
11 encountered from that sienna minivan was markedly different  
12 than what you found in the back trunk of that '74 Caprice?

13 A Yes, sir.

14 Q As a matter of fact during your entire operation in the  
15 investigation of operation Blockbuster, you never found drug  
16 proceeds stored just sitting in plain view in somebody's  
17 trunk, did you?

18 A No, sir.

19 Q Now, the Corvette that you seized wasn't even located at  
20 8717 address, was it?

21 A No, sir.

22 Q It was seized from 98th Street in Kansas City, Missouri?

23 A Yes, sir.

24 Q You didn't find any cash in that vehicle, did you?

25 A Not that I'm aware of.

1 Q No false quarter panels?

2 A No, sir.

3 Q No secret compartments?

4 A No, sir.

5 Q You found no drugs inside that Corvette when you found  
6 it, right?

7 A Not to my knowledge.

8 Q We talked at the beginning of our discussion about the  
9 size and scope of operation Blockbuster. It was a big one.  
10 You wouldn't call it Blockbuster if it was a small operation  
11 obviously, that would make no sense, right?

12 A That's wasn't the reason it was named Blockbuster, but I  
13 can see your point.

14 Q Fair enough, I won't go into that. Operation  
15 Blockbuster cost a lot, didn't it?

16 A Cost a lot as far as federal expenses?

17 Q Let's break it down. Man-hours, you were working  
18 primarily on operation Blockbuster for a while, weren't you?

19 A Yes, sir.

20 Q About how long?

21 A We discussed that earlier, about a year.

22 Q And year you were primary. That was your main focus on  
23 your work for the government so that is thousands of  
24 man-hours, right?

25 A Yes, sir.

1 Q And you weren't the only one, you had other agents  
2 working. If not full-time, significant amounts of their time  
3 on operation Blockbuster?

4 A That's correct.

5 Q And it wasn't just Homeland Security, it was the DEA as  
6 well, correct?

7 A Yes, sir.

8 Q And the KCMO, state and local, they pitched in as well.  
9 Took a lot of manpower, right?

10 A Right.

11 Q So in terms of man power cost, it was a lot, right?

12 A Sure.

13 Q And wiretaps are expensive too, aren't they?

14 A Yes, they are.

15 Q Why are wiretaps so expensive?

16 MR. BOHLING: Your Honor, I'm going to object at  
17 this point. I think this is all self-evident from what has  
18 been in testimony.

19 THE COURT: Yeah. Counsel, we are we going? Just  
20 get to the point. I mean, I've heard it.

21 MR. CARPENTER: I will, Your Honor.

22 BY MR. CARPENTER:

23 Q Operation Blockbuster costs a lot of money, didn't it?

24 A Yes, sir.

25 Q Any idea what it costs the government out of pocket to

1 put operation Blockbuster on?

2 THE COURT: Counsel, get to the point.

3 MR. CARPENTER: All right.

4 THE COURT: Get to your point.

5 BY MR. CARPENTER:

6 Q My point is you can't put on these expensive undercover  
7 operations without sources of revenue from civil forfeitures,  
8 can you? Forfeitures are a critical source of revenue for you  
9 to be able to do the work that you do, correct?

10 A None of the money used on this investigation came from  
11 asset forfeitures.

12 Q Well, you would agree with me, wouldn't you, that the  
13 Department of Justice views asset forfeiture as an important  
14 means of funding certain departmental state and local law  
15 enforcement activities, correct?

16 MR. BOHLING: Objection.

17 THE COURT: Yes.

18 MR. BOHLING: He has answered that none of the money  
19 came from the asset forfeiture fund.

20 MR. CARPENTER: That's not the question I asked.

21 THE COURT: What is your point?

22 MR. CARPENTER: My point is --

23 THE COURT: -- relevant to me making a decision on  
24 whether or not --

25 MR. CARPENTER: My point --

1 THE COURT: -- don't interrupt me.

2 MR. CARPENTER: I'm sorry.

3 THE COURT: Whether or not this evidence suggests  
4 preponderance of the -- they have met their burden. That is  
5 what the Court is determining. Right? I'm not determining  
6 policy, I'm making a factual determination of whether what the  
7 government presented has met the burden to justify this being  
8 forfeited or otherwise they have entitled to this. Whether on  
9 41 or anything else.

10 Now, with that said, tell me how that is relevant to  
11 the decision I have to make? Unless you disagree with what my  
12 job is right now?

13 MR. CARPENTER: Well, yeah, Your Honor, this goes to  
14 motive and the reason why the government is so eager to take  
15 assets. The government is addicted to asset forfeiture.

16 THE COURT: I don't care. I don't care what -- what  
17 I care about is the evidence and this is what you're asking  
18 me. Do you want me to start going down that road? The  
19 evidence you're asking me have they met their burden? Is that  
20 not why I'm here?

21 MR. CARPENTER: That is the key issue.

22 THE COURT: Well, then that's what we need to focus  
23 on. Evidence to support that this somehow was part of this  
24 criminal enterprise and they need to show that. That's what  
25 where we need to focus.

1 MR. CARPENTER: I am hearing that you are not seeing  
2 the relevance in this one, so I'm going to move on from this.

3 THE COURT: You think?

4 MR. CARPENTER: After a while I get the picture.

5 THE COURT: Okay.

6 MR. CARPENTER: You know, what? I may be done. Let  
7 me confer with my counsel and see if there's anything else.

8 THE COURT: Okay. And this ten minutes has turned  
9 into a long ten minutes.

10 MR. CARPENTER: I'm just conferring with my client  
11 to see if I needed to ask anything else, Your Honor.

12 THE COURT: Okay.

13 MR. CARPENTER: And we are done.

14 THE COURT: Okay. Counsel.

15 MR. BOHLING: Thank you, Your Honor. I'll be brief.

16 REDIRECT EXAMINATION

17 BY MR. BOHLING:

18 Q Agent King, I'd first like to direct your attention back  
19 to Exhibits 4 and 5 which is the intercepted conversation.  
20 Those were in fact trial exhibits, correct?

21 A I'm sorry?

22 Q Trial exhibits, exhibits at the trial?

23 A Yes, sir.

24 Q And they were Exhibits I think 123 and 124?

25 A That sounds right.

1 Q Did you review them for trial?

2 A I did.

3 Q And did you review them before the hearing today?

4 A I did.

5 Q Are they the same?

6 A They are.

7 Q Okay. Do you have any reason to believe that these  
8 conversations are any different than they have you ever been?

9 A I do not.

10 Q Now, with regard to that particular conversation on  
11 June 9th, would it be fair to say that some conversations are  
12 more important than others when you intercept them? You give  
13 more importance to them?

14 A Yes, sir.

15 Q Was this one that you gave more importance to?

16 A Do I give this one more importance?

17 MR. CARPENTER: Objection, relevance.

18 THE COURT: Overruled.

19 BY MR. BOHLING:

20 Q At the time, during this investigation?

21 A It's like pieces to the puzzle. That's a piece to a  
22 puzzle. And to me it explains the \$41,000 in the trunk of Mr.  
23 Dunn's car. So in that regards, yes, it is a piece of a  
24 puzzle.

25 Q Okay. And in that regard, you are talking about the

1 mention of the 41 several times during the conversation?

2 A Yes.

3 Q And there seems to be some discussion of some debt  
4 between the two?

5 A Yes.

6 Q Okay. Now, when you went to that scene did the fact  
7 that this conversation had been intercepted, was that in your  
8 mind when you went to the scene?

9 A No, sir.

10 Q Okay. Was the fact that the money was found, did that  
11 tie back up to you to the intercepted conversation?

12 A Yes, sir.

13 Q And didn't you mention -- did you mention that you had  
14 some kind of bet?

15 A That I had a bet?

16 Q Yes.

17 MR. CARPENTER: Objection, relevance.

18 THE COURT: I'm going to overrule.

19 BY MR. BOHLING:

20 Q Was it as to this money?

21 A I'm sorry?

22 Q Was it as to his money? Am I remembering that  
23 correctly?

24 A I had a bet with another officer how much money was in  
25 the bag and I lost a six pack. That's the only thing.



1 Q Okay. Now, I would like to turn your attention to the  
2 Corvette. The location where the Corvette was seized from, we  
3 had a discussion on that on cross-examination. Who was  
4 associated with that residence?

5 A The Corvette, that was at Mr. Corredor's house.

6 Q In Kansas City, Kansas?

7 A Yes, sir.

8 Q Okay.

9 MR. BOHLING: And now, Your Honor, I'm going to ask  
10 a series of questions where we are going to have a  
11 disagreement about their admissibility. I'd like to do that  
12 at least as an offer of proof. It also would allow me to call  
13 the other agent and get this over a little quicker. They have  
14 the same information. I understand that there will be an  
15 objection and I respect that.

16 THE COURT: Okay.

17 MR. BOHLING: But I'd at least like to get it on the  
18 record as an offer of proof. And then we can deal with that.

19 MR. CARPENTER: Sure. When you would like me to  
20 listen to the argue of proof and object later or object now?

21 THE COURT: We'll just let the offer of proof and  
22 then we will object.

23 BY MR. BOHLING:

24 Q Now, as to the Corvette we all know that Mr. Corredor  
25 cooperated with the government?

1 A Yes, sir.

2 Q And as part of that cooperation he was subject to a  
3 series of proffers by government agents?

4 A Yes, sir.

5 Q And you were present at most of those?

6 A Yes, sir.

7 Q And you read the reports of the proffers in any case?

8 A I have.

9 Q Do you know whether this Corvette was discussed with Mr.  
10 Corredor during one of those proffers?

11 A Yes, it was.

12 Q And what did Mr. Corredor say about the Corvette?

13 A He said that Mr. Dunn had owed him over \$100,000 dollars  
14 at one point. And he took two vehicles from Mr. Dunn as  
15 payment towards his drug debt. And one was a conversion van  
16 that he gave him \$20,000 credit, and the other one was the  
17 Corvette which he gave him \$40,000 credit for.

18 Q So essentially, according to Mr. Corredor, the Corvette  
19 was a payment from Mr. Dunn to him for a drug debt?

20 A Yes, sir.

21 MR. BOHLING: And now I understand that they would  
22 object to that testimony.

23 MR. CARPENTER: We do. It is classic hearsay.

24 THE COURT: Would you like to ask him any questions?

25 MR. CARPENTER: Yeah, on that subject?

1 THE COURT: Yes.

2 MR. CARPENTER: I have a substantive  
3 cross-examination, but in terms of the -- I would like to ask  
4 you a few.

5 THE COURT: Go ahead.

6 BY MR. CARPENTER:

7 Q You were not present for --

8 THE COURT: -- what do you mean a substantive cross?

9 MR. CARPENTER: I have a couple recrosses on the  
10 theory that the vet is for payment for drug money that I would  
11 like to ask him about. I can do it now since this is a bench  
12 procedure. I can do it now or I can do it later.

13 BY MR. CARPENTER:

14 Q But my point on this is that, Agent King, you were not  
15 present when this statement by Mr. Corredor was allegedly  
16 made, were you?

17 A That's correct.

18 MR. BOHLING: That's right, Your Honor. We're only  
19 trying to -- I would represent to the Court and to counsel  
20 that Agent Casner's testimony would be the same. And it is  
21 memorialized in her report that is actually marked in  
22 evidence.

23 THE COURT: Okay.

24 MR. BOHLING: I'm only trying to save time. I am  
25 happy to call her for purposes of this hearing.

1 THE COURT: No, that will be cumulative. And this  
2 is what she will testify about.

3 MR. CARPENTER: And it is still hearsay.

4 MR. BOHLING: Right.

5 THE COURT: Okay. Calm down a second. Counsel, you  
6 gotta stop talking over folks. We have a court reporter here.

7 MR. CARPENTER: Sorry, I'll --

8 THE COURT: There you go again. And have a seat.  
9 You are wondering around too much. I don't like that in the  
10 courtroom. Go from the podium to the seat, please. That's  
11 how we lose control of the courtroom. And it's not fair to my  
12 court reporter if you're talking over folks. She's got to  
13 keep a record. Thank you.

14 So with respect to that, I know there is an  
15 objection is to hearsay whether this witness, Special Agent  
16 King testified or whether your other witness would testify,  
17 anything related to that conversation then I understand there  
18 is an objection to it. And I understand what the objection,  
19 and Mr. Carpenter if you want to make a fuller objection to  
20 that, you are free to do so. If you want to put more on the  
21 record, you can do so at this time.

22 MR. CARPENTER: Well, why don't I do it now.

23 THE COURT: Yes.

24 MR. CARPENTER: Clearly hearsay, it's an  
25 out-of-court declarative statement offered for the truth in

1 the matter asserted. No one denies that. Actually I don't  
2 think the government denies that it is inadmissible under the  
3 rules of evidence. And either the rules of evidence apply to  
4 this case or they don't. There's no halfway or sometimes it  
5 does or it doesn't. There is no exception to which this  
6 applies. And the problem is with this proffer it is hearsay  
7 within hearsay. The document itself is hearsay. And the  
8 statements which all began, Mr. Corredor represents, Mr.  
9 Corredor states, those are also hearsay. There is no  
10 exception that applies to let either one of them in.

11 There are plenty of cases, US v. Taylor, is one,  
12 that is 462 F.3d at 1023, to indicate that even if there was  
13 somehow they could get the proffer itself in, the statements  
14 contained inside are double hearsay and are completely  
15 inadmissible.

16 So our only point is this is incredibly prejudicial  
17 to us. What we have is the third hand testimony of a  
18 convicted drug dealer, murderer. Mr. Corredor ordered a hit  
19 as we know on another person. This is not a reliable source.  
20 This is a gentleman who was faced with the death penalty and  
21 gave state evidence and was doing what he could to avoid the  
22 death penalty in this case. He has absolutely motivation  
23 history of dishonesty and motivation to lie. So there is no  
24 reliability to it. What is even worse is we can't  
25 cross-examine him. We can't put Mr. Corredor up and cross

1 him.

2 For instance, this is a statement and I can do this  
3 with Mr. King, this statement came in in September of 2009, it  
4 was after they had already taken the Corvette. It is not  
5 contemporaneous. It wasn't anywhere in the trial. No one at  
6 trial testified that the Corvette was given for drug proceeds.  
7 This is a red herring that has been after-the-fact put up and  
8 we can't cross on it. So that is what makes it particular  
9 devastating.

10 In addition there is no foundation. Agent King  
11 wasn't even present or around when the statements were made.  
12 That wouldn't make it not hearsay if he wasn't present. But  
13 he can't even, doesn't even have the foundation to offer any  
14 firsthand testimony about it. The other woman outside does,  
15 but it is still hearsay.

16 This is tremendously prejudicial critical evidence  
17 terribly unfair to my client that they are doing this without  
18 giving us the opportunity to test the veracity and  
19 truthfulness of Mr. Corredor. When at the end of the day what  
20 it comes down to is my client's word versus Mr. Corredors. So  
21 I think we already -- if the rules of evidence apply, and they  
22 must in fairness to take this man's property from him, this is  
23 evidence that just come in on any theory.

24 THE COURT: Thank you, counsel.

25 MR. BOHLING: I'd like to take that issue up

1 probably in briefing. I may agree with him actually. It is a  
2 convincing presentation. I do think there are distinctions to  
3 be made. That this is a motion hearing and that you would  
4 find precedence in a suppression hearing that are really  
5 almost indistinguishable from what I have given you. But I  
6 want to think about that question thoughtfully because it is  
7 important and I would like to weigh in on a paper filing  
8 shortly after the hearing on that issue.

9 THE COURT: Okay. And we will talk about that after  
10 we finish with the evidence portion.

11 BY MR. BOHLING:

12 Q I did want to ask you about the money taken from the  
13 car, from the Caprice, the \$41,000 dollars, do you recall even  
14 approximately what the denominations of those funds were?

15 A Yeah, I'd look to refresh my memory. There was a  
16 variety of different dominations. The predominant one were  
17 there were more than 1300 \$20 dollar bills. And all the  
18 dominations were less than \$100 and \$50 amount.

19 Q Okay. And do you know whether or not there was a drug  
20 dog that was brought to that money?

21 MR. CARPENTER: Objection, lack of foundation. And  
22 it's hearsay. He was not present.

23 THE COURT: What is the question again?

24 MR. BOHLING: Whether he knows if there was a drug  
25 dog. I haven't ask him about any results.

1 THE COURT: He can ask if he knows. And then we  
2 wait to see what he says.

3 MR. CARPENTER: That's hearsay.

4 THE COURT: Overruled, you can ask the question.

5 BY MR. BOHLING:

6 Q Do you know?

7 A I was there. I don't remember a drug dog.

8 THE COURT: There it is.

9 MR. CARPENTER: That solves the problem, Your Honor.

10 THE COURT: It solves it because it is premature.  
11 So that's what I'm saying. It's a foundational question, it's  
12 not a hearsay question. He doesn't know and we move on  
13 counsel.

14 BY MR. BOHLING:

15 Q One last series of questions, if I may. We talked about  
16 the \$653,000 dollars that was seized from the van?

17 A Yes, sir.

18 Q And you indicated during your testimony that the  
19 circumstances of that seizure were different, I presume from  
20 the circumstances of the seizure of the \$41,000 dollars, how  
21 was that so?

22 A So Mr. Corredor was supplied with cocaine by the Mexican  
23 cartels that he would distribute that cocaine to his  
24 customers, and those customers would distribute to their  
25 customers, and then there was a process where they would



1 collect the money. And eventually that money would make it  
2 back to Mr. Corredor. Mr. Corredor would give it back to  
3 somebody who represents the cartel. They would take that  
4 money and they would have to prepare it. The majority of  
5 these proceeds that go back to the cartel go back through bulk  
6 cash smuggling. And the way they do that there is a bigger  
7 risk because you're putting together large quantities of  
8 money. \$653,000 was a lot more than \$41,000. \$41,000 would  
9 have eventually been put into a larger collection of money.  
10 Well, that money has to be packaged tight, and it's going to  
11 be going to certain individuals. And it is marked, they  
12 conceal it. And because it's gotta to go from Kansas City to  
13 Mexico, and you have a lot of law enforcement agencies working  
14 the highways doing interdiction, and they use drug dogs so you  
15 have to conceal it, you have to have false compartments, you  
16 have to use things like pepper or axle grease carbon paper and  
17 all these things to conceal the money because they don't want  
18 to lose that big amount of money. The \$41,000 was going to be  
19 given to Corredor. Corredor and his associates would have to  
20 count the money to make sure the count was right.

21 MR. CARPENTER: Objection, speculation, Your Honor.

22 THE COURT: Hold on.

23 THE WITNESS: Sorry.

24 THE COURT: I'm going to sustain. Just ask another  
25 question. I think you are running into a narrative.

1 MR. BOHLING: Right.

2 BY MR. BOHLING:

3 Q So if I understand what you're saying the larger amount  
4 of money -- and that wasn't the only large amount of money  
5 taken in this case, there were actually several large  
6 seizures, right?

7 A It was \$1.6 million dollars that was taken off.

8 Q And so that money is moving from Kansas City to Mexico  
9 and therefore is at high risk of being intercepted on the  
10 road?

11 A Exactly.

12 Q A local guy like Mr. Dunn, if it's Mr. Dunn or a local  
13 person -- let's take it out of that context, but a local  
14 person whose working locally and not directly with Mexico  
15 would not have the same need for such extreme measures?

16 A Yes.

17 MR. BOHLING: Thank you. If I may talk to my  
18 counsel for just a moment?

19 THE COURT: Yes.

20 MR. BOHLING: Thank you. That's all I have for  
21 Agent King.

22 THE COURT: Mr. Carpenter, any recross?

23 MR. CARPENTER: I'll keep it very brief, Your Honor.

24 THE COURT: I'm going to hold you to it.

25 RECROSS-EXAMINATION

1 BY MR. CARPENTER:

2 Q Let's talk about the Corvette. I appreciate it. You  
3 testified at length at the criminal trial in this case,  
4 correct?

5 A Yes, sir.

6 Q And you never testified once during the criminal trial  
7 that that Corvette was given to Mr. Corredor by my client as  
8 payment for drug debt, did you?

9 A No, sir.

10 Q 12 law enforcement officers, 11 more besides yourself  
11 testified as well, and none of them testified to that during  
12 the criminal trial, did they?

13 A Not to my knowledge, no, sir.

14 Q And in all of the hundreds of hours of wiretaps, none of  
15 those wiretaps indicate that that Corvette was given to Mr.  
16 Corredor as payment for a drug debt?

17 A No, sir.

18 Q And you testified at length at the suppression hearing  
19 in this case as well, correct?

20 A I don't even remember the suppression hearing to be  
21 honest with you.

22 Q Right. That is the document I gave you earlier to  
23 refresh your recollection of the 8717 Kentucky sweep?

24 A Yeah, I didn't see the whole document, I just saw a part  
25 of it.

1 Q Sure. Sure. I didn't really give you much time to read  
2 it all, did I?

3 A Yeah, I'd like to see where the document came from  
4 actually.

5 Q Sure. I think it is an official document, but you don't  
6 recall testifying at that suppression hearing either that  
7 Mr. Dunn gave Mr. Corredor that Corvette as payment for a drug  
8 debt, did you?

9 A No, sir.

10 Q Neither did anybody else at the suppression hearing, did  
11 they?

12 A No, sir.

13 Q There is nothing in the record of the criminal case at  
14 all indicating that Mr. Dunn gave that Corvette to Mr.  
15 Corredor as payment for a drug debt, is there?

16 A There has been no testimony.

17 Q And Mr. Corredor testified at length during the criminal  
18 trial, correct?

19 A Yes, sir.

20 Q He was the star witness, right?

21 A Yes, sir.

22 Q And he never testified that he got that Corvette --

23 MR. BOHLING: -- Your Honor, we will stipulate that  
24 he is right, there was no testimony at trial about the  
25 Corvette.

1 MR. CARPENTER: Fair enough. That will save me  
2 little time.

3 BY MR. CARPENTER:

4 Q As a matter of fact, Mr. Corredor when asked how many  
5 vehicles he had, he testified that he had four and he never  
6 identified the Corvette, did he?

7 A I'm sorry. Could you repeat the question.

8 Q Sure. At the criminal trial Mr. Corredor was asked  
9 about how many vehicles he owned and he identified that he  
10 owned a Ford lariat, correct?

11 A I don't remember his testimony about his cars from the  
12 trial. I would have to look at the transcript to refresh my  
13 memory.

14 Q We'll get to that in one second. Do you remember  
15 filling out an affidavit for probable cause for the search for  
16 the 8717 Kentucky property?

17 A Yes, sir.

18 Q And in that affidavit you were sworn under oath, right?

19 A Yes, sir.

20 Q And you were telling the truth in that affidavit.  
21 correct?

22 A Always.

23 Q Always. And in part of that affidavit you testified  
24 that a 2003 Ford conversion minivan was given to Corredor by  
25 Dunn in payment for a drug debt, correct?

1 A I haven't looked at that affidavit in a long time.

2 Q Would it refresh recollection if I showed it to you?

3 A Sure.

4 Q Great. That is marked as Exhibit No. 47 for  
5 identification. I made a copy for counsel.

6 MR. CARPENTER: May I approach the witness, Your  
7 Honor?

8 THE COURT: You may.

9 BY MR. CARPENTER:

10 Q Can you take a look at Paragraph 26, which is on  
11 Page 11.

12 A Okay.

13 Q This is dated June 12th, 2009, correct?

14 A Yes, sir.

15 Q And this is the affidavit that you swore out to get the  
16 search warrant for the 8717 Kentucky address, right?

17 A Yes, sir.

18 Q Let me know when you're done looking at Paragraph 26.

19 A I'm done.

20 Q And in that paragraph you state that you have  
21 information that Dunn recently turned 2003 Ford conversion  
22 styled minivan as payment for a drug debt, correct?

23 A Yes.

24 MR. BOHLING: Objection. I'd like to ask counsel to  
25 read the full sentence because that is important.

1 MR. CARPENTER: Happy to. Starting with the  
2 beginning of Paragraph 26?

3 MR. BOHLING: Yeah, that would be fine.

4 MR. CARPENTER: Sure.

5 BY MR. CARPENTER:

6 Q "On May 26, 2009, at approximately 3:02, Special Agent  
7 Scott Francis observed Corredor arriving in the area of 8717  
8 Kentucky, Kansas City, Missouri. Corredor was driving a 2003  
9 Ford conversion style minivan displaying Missouri license  
10 plate, MD3 E4K. Based on previously intercepted calls between  
11 Corredor and Dunn, Dunn recently turned this vehicle over to  
12 Corredor in an attempt to partially satisfy a drug debt owed  
13 to Corredor." Did I read that correct?

14 A Yes.

15 Q And there is no mention of the Corvette anywhere in  
16 there, is there?

17 A No, sir.

18 Q Let me -- would it refresh your -- for identification  
19 this is part of Exhibit 45. I'm going to take a couple pages  
20 out of the transcript from the criminal trial and hand a copy  
21 --

22 MR. BOHLING: Is this Mr. Corredor's testimony?

23 MR. CARPENTER: It is. And if I can approach the  
24 witness?

25 THE COURT: Yes.

1 BY MR. CARPENTER:

2 Q Would it refresh your recollection of Mr. Corredor's  
3 testimony at the criminal trial if I were to show you an  
4 example of his testimony about what vehicles he owned?

5 A Sure.

6 Q And this is Pages 559 to 560, if you could take a look  
7 at the bottom of Page 559 --

8 THE COURT: What are you using this for?

9 MR. BOHLING: Yeah.

10 MR. CARPENTER: To show that Mr. Corredor testified  
11 at trial when they asked him about his vehicles --

12 THE COURT: Okay. I thought part of this is you are  
13 getting on the government for doing the very same thing that  
14 you are asking to do now. You're saying everything they would  
15 submit, if they were using that testimony, would be hearsay,  
16 Your Honor. They shouldn't be able to do it, they shouldn't  
17 be able to bring it forward because that person is not here.

18 MR. CARPENTER: I'm refreshing his -- I'm sorry.

19 THE COURT: No, no, no. That's semantics. That is  
20 totally -- you're asking him to rely upon that to make some  
21 determination on what this individual said.

22 MR. CARPENTER: I'm trying to refresh his  
23 recollection.

24 THE COURT: No, no. I'm going to hear every bit of  
25 this distinguishing.



1 MR. CARPENTER: Sure.

2 THE COURT: You're going to ask him to read from  
3 that testimony?

4 MR. CARPENTER: I'm going to ask if that refreshes  
5 his recollection?

6 THE COURT: As to what? What?

7 MR. CARPENTER: As to what Mr. Corredor testified.

8 THE COURT: Okay. What he testified to is what? If  
9 they are going to ask him -- if you go open this door, I'm  
10 going to let him do it, I'm going to allow them to open that  
11 door. Okay. I'm going to allow them to same opportunity.  
12 You can shade it how you want. I'm going to allow it. You  
13 can make your objections. I'll tell you that right now.

14 MR. CARPENTER: I will withdraw that. Withdraw,  
15 Your Honor.

16 THE COURT: It's withdrawn.

17 MR. CARPENTER: Nothing further.

18 THE COURT: Okay. Thank you.

19 MR. BOHLING: Just like two --

20 THE COURT: No, two bites at the apple.

21 MR. BOHLING: Okay. I understand.

22 THE COURT: Special Agent King, I appreciate it, you  
23 can stand down, sir.

24 Two bites at the apple, that's it.

25 MR. BOHLING: Thank you, Your Honor.

1           THE COURT: Any further evidence from the  
2 government?

3           MR. BOHLING: So we do have Agent Casner here. The  
4 only thing she would do is she was present for the Corredor  
5 proffer that we just heard about.

6           THE COURT: Would that be any different arguable in  
7 your opinion?

8           MR. BOHLING: In my opinion it would not. The only  
9 difference is he did object to the fact that the agent wasn't  
10 there. That is only difference in the chain. Otherwise I  
11 would proffer to you that she is going to say that the proffer  
12 statement from Mr. Corredor is exactly the same.

13           THE COURT: I know it wouldn't change your opinion  
14 on that. Do we need to hear from her? I think you would make  
15 the same argument.

16           MR. CARPENTER: Yes, I would make the same argument.

17           THE COURT: Okay. Whether she is here or not?  
18 Okay.

19           MR. BOHLING: In that case, Your Honor, we rest at  
20 this point.

21           THE COURT: Mr. Dwerlkotte, what do you have, sir?

22           MR. DWERLKOTTE: Your Honor, at this point I think  
23 we would -- one of the reasons we made such a big deal of the  
24 CAFRA applying versus Rule 41. CAFRA, Your Honor, would have  
25 to make a determination under 983 if the government has met

1 its burden. If it has, then it would shift back to us. So  
2 I'm a little reluctant to put Mr. Dunn on or anybody else on  
3 subject to cross-examination for credibility determinations  
4 when we can't do the same.

5 THE COURT: You know, procedurally, how are we  
6 bringing this? You say that, and I understand what you're  
7 saying because -- but how are we bringing this.

8 MR. CARPENTER: I don't think there is any doubt  
9 that CAFRA would have to apply. So I don't know how -- the  
10 burden either way, even under Rule 41, the burden would go  
11 from the government in the event that Your Honor found that  
12 their burden had been met, then would shift back to us. Under  
13 either scenario there is still a burden shifting here.

14 THE COURT: Well, then I should hear the evidence?  
15 What are you asking -- tell me --

16 MR. CARPENTER: -- I'm asking you to make a  
17 determination if the government has met its burden to  
18 establish whatever burden is that they think that they have.  
19 I think it's CAFRA. Preponderance of the evidence, that it  
20 was substantial connected to narcotics trafficking. I'm not  
21 sure exactly what the government's position is on Rule 41?

22 THE COURT: What's the burden on Rule 41?

23 MR. BOHLING: I think in this case I would accept  
24 that the burden is preponderance, and that it would be our  
25 burden to show by preponderance of the evidence that this was

1 connected to narcotics trafficking. Either as proceeds or as  
2 facilitating property which is a very important concept in  
3 this case.

4           However, I don't think it is incompetent on the  
5 Court to make any determination at this point under either  
6 scenario. This cannot be a CAFRA case, we did not file a  
7 civil forfeiture complaint. There is no civil forfeiture on  
8 file. Ultimately from our burden of proof, I don't think it  
9 makes any substantial difference. It's preponderance. We  
10 bear it.

11           THE COURT: It makes no difference.

12           MR. BOHLING: It makes no difference.

13           THE COURT: Help me.

14           MR. DWERLKOTTE: I don't think you can say that the  
15 preponderance of the evidence standard applies when it's Rule  
16 41. CAFRA has to apply. And that's what the standard is  
17 under CAFRA so we apply that standard. And if the government  
18 -- an the reason this is important, Your Honor, is there is  
19 cases we have cited in our trial brief, that we don't have to  
20 do anything. If Your Honor finds that the government hasn't  
21 met its burden, it doesn't shift, it's over, we win. So  
22 that's why --

23           THE COURT: Well, whether it's under Rule 41 or  
24 under CAFRA?

25           MR. DWERLKOTTE: No, under CAFRA, Your Honor. I

1 would argue it's the same thing under Rule 41. Functionally,  
2 I think, we have a stipulation that the cars were registered  
3 in Mr. Dunn's name. So I think that alone gives us the  
4 sufficient property interest which would trigger the  
5 government's burden.

6 In any event, I think you still have an obligation  
7 to decide if the government has met its burden before we  
8 decide whether or not we put Mr. Dunn on the stand.

9 THE COURT: I'm a bit confused. So if I feel I bit  
10 confused, let me tell you how I feel I'm going to address  
11 this.

12 MR. DWERLKOTTE: Absolutely.

13 THE COURT: I'm going to address it like I would any  
14 other time like I would if I was trial. Because you're asking  
15 me to make some judgment at the close of the -- what I'm  
16 hearing, at the close of the government's evidence. And at  
17 this point in time I'm not prepared to say to you that they  
18 have not met their burden. If you've got evidence on you're  
19 going to put it on. My intention of this is to hear what you  
20 have.

21 Those things that you believe that the Court  
22 shouldn't consider, then the Court will have the opportunity  
23 to review any subsequent motions filed. Whether I should  
24 consider this on the outset. Right now I need everything that  
25 I need to make a decision. I understand what you're saying,

1 but I understand. But I need to hear the evidence. It's your  
2 call.

3 MR. DWERLKOTTE: And would it be possible if we can  
4 take a small lunch break so we can make that determination?

5 THE COURT: Yeah. And we can break. And I  
6 understand what you're saying, but I think it puts the Court  
7 -- what I'm trying to do and what I thought we were trying to  
8 do, kind of to the best we can to deal with this in one  
9 setting, right?

10 MR. DWERLKOTTE: Sure.

11 THE COURT: But you're asking me to make a decision  
12 now preponderance so you don't have to put -- and I'm not  
13 prepared to do that.

14 MR. DWERLKOTTE: And that's fair, Your Honor. I  
15 think what we'll do if we can do is have a small lunch break.  
16 If we agree to put Mr. Dunn on, we'll go through his business  
17 records and things like that, and I think that will be all we  
18 do.

19 MR. CARPENTER: And I have one wrinkle too.

20 THE COURT: Sure.

21 MR. CARPENTER: Your Honor, is right that our  
22 position is the transcript pages shouldn't come in. If they  
23 do come in -- which is why we haven't offered any. We haven't  
24 designated any the way the government has.

25 If Your Honor thinks they do come in, we would

1 designate a couple to defend ourselves.

2 THE COURT: I don't think -- here's what I did. I  
3 thought the government was not putting any in?

4 MR. BOHLING: I have not offered those.

5 THE COURT: He has not offered because it was  
6 problematic when we started the hearing. And I believe and I  
7 believe that no matter how thin we are going to slice it, that  
8 the distinction was the distinctions without any -- in my  
9 opinion. I don't think the government is going there, are  
10 you?

11 MR. BOHLING: No, Your Honor.

12 THE COURT: I think that is an issue that we can put  
13 to bed.

14 MR. CARPENTER: And we won't designate anything else  
15 either.

16 THE COURT: Okay. All right.

17 I guess, you know, I'm willing -- and I understand  
18 what you're struggling with. That's why my question was what  
19 am I hearing? You believe it should be this type of case?

20 MR. DWERLKOTTE: Absolutely, Your Honor.

21 THE COURT: But they haven't brought that.

22 MR. DWERLKOTTE: But we haven't brought a Rule 41  
23 either.

24 THE COURT: Right.

25 MR. DWERLKOTTE: Right.

1 THE COURT: So what you're saying is this, they  
2 have. They brought a 41 and you're saying this is not a 41  
3 hearing?

4 MR. DWERLKOTTE: They've asked for a Rule 41 type  
5 hearing.

6 THE COURT: Right.

7 MR. DWERLKOTTE: Right.

8 THE COURT: So logically, work with me.

9 MR. DWERLKOTTE: Yes.

10 THE COURT: Is if at some point -- I heard your Rule  
11 41 -- you can call it what you want, I heard evidence.

12 MR. DWERLKOTTE: Right.

13 THE COURT: If I go with you and I don't believe  
14 this is a Rule 41 type hearing, that's it.

15 MR. DWERLKOTTE: Right.

16 THE COURT: It's not a Rule 41 type hearing.

17 MR. DWERLKOTTE: That's correct.

18 THE COURT: So when I make a decision and I set  
19 aside the forfeiture, set it aside, then we are Ground Zero,  
20 right? Okay.

21 MR. DWERLKOTTE: Well.

22 THE COURT: No, please don't make it difficult. If  
23 I don't think this is a Rule 41, you win, right? But then I  
24 set aside the administrative forfeiture, right?

25 MR. DWERLKOTTE: Right.



1           THE COURT: So it's not a Rule 41, I set aside the  
2 administrative forfeiture, so then we just have them with his  
3 property with nothing to forfeit it. That was your argument  
4 to me.

5           MR. DWERLKOTTE: That's fair, Your Honor. I don't  
6 want to complicate it.

7           THE COURT: It's your argument. So therefore, give  
8 it back.

9           MR. DWERLKOTTE: Right, right.

10          THE COURT: That's what I'm saying.

11          MR. DWERLKOTTE: That's what I'm saying.

12          THE COURT: Okay. You're weren't. You were arguing  
13 with me.

14          MR. DWERLKOTTE: I misunderstood. I apologize.

15          THE COURT: Okay. I'm going to listen to it, I may  
16 decide it's not a Rule 41. Or I can decide it is a Rule 41  
17 and they haven't met their burden. And if they haven't met  
18 their burden, which is preponderance, which we both agree  
19 would be in both cases, you win again.

20          MR. DWERLKOTTE: Right.

21          THE COURT: Then we have to worry about if they  
22 haven't met their burden, then we have to worry about how do  
23 we have these assets or this property that's been -- and then  
24 we get to the other stuff. And I think that's it?

25          MR. DWERLKOTTE: Right. I think that's right. My

1 only fear was there could be testimony that we can't un-ring  
2 once it comes out if it happens on cross-examination. So you  
3 are going to have testimony from Mr. Dunn, but no testimony  
4 from anybody else. So that was my only concern.

5 THE COURT: That is your -- that's your strategy to  
6 determine how you want to present this evidence.

7 MR. DWERLKOTTE: Right.

8 THE COURT: That's on you. That is not on the  
9 Court.

10 MR. DWERLKOTTE: Right.

11 THE COURT: And if you do it and you open door, so  
12 be it.

13 MR. DWERLKOTTE: Right.

14 THE COURT: That's part of litigating matters, I  
15 guess. I can't help you there.

16 MR. DWERLKOTTE: I agree.

17 THE COURT: So that's that I'm saying. So I  
18 understand what you're saying. But I think either way this  
19 matter can be resolved today. And I think even counsel said  
20 he may agree with you on the hearsay.

21 MR. BOHLING: I would like to consider that.

22 THE COURT: He may. Because I'm leaning heavily in  
23 terms of whether that even comes in in your favor. We'll see.

24 MR. DWERLKOTTE: Okay. I think that's it.

25 THE COURT: So I'll give you 45 minutes for break.

1 We'll come back at 1:15. You'll tell me what you want to do.  
2 We'll make some arguments if need be.

3 This is a little different. And I understand it is  
4 complex in a lot of ways. And I know you don't want to put  
5 yourself in a position that you can't get out.

6 MR. DWERLKOTTE: Right.

7 THE COURT: And I'm not trying to get you there.

8 MR. DWERLKOTTE: I just need a second to go over  
9 some things with counsel.

10 THE COURT: Okay. So I'll stop firing questions at  
11 you. See you at 1:15.

12 (THEREUPON, a short recess was had; WHEREUPON, the following  
13 proceedings were had.)

14 THE COURT: Mr.Dwerlkotte?

15 MR. DWERLKOTTE: We decided not to call Mr. Dunn.  
16 So I guess we will rest.

17 THE COURT: Okay. Great.

18 How would you like the Court to proceed?  
19 Mr. Bohling, I thought you may have suggested that you want to  
20 brief something or you all tell me?

21 MR. BOHLING: I would be happy to give a  
22 post-hearing brief given the complexity of the issues. Some  
23 of this is a little different -- and I think both of us would  
24 say this, perhaps have gone a little differently than we  
25 anticipated. I think very important issue of is this a Rule

1 41 hearing? Is it something else? I do think that is  
2 substantively important.

3 THE COURT: Because a Rule 41 hearing would require  
4 this Court what?

5 MR. BOHLING: I think --

6 THE COURT: I want you guys to make that  
7 distinction. A Rule 41 as opposed to?

8 MR. BOHLING: I don't think it can be anything else.

9 THE COURT: Okay. And Dwerlkotte is saying, this is  
10 not a Rule 41. This is, if anything, would have to be under  
11 CAFRA.

12 MR. DWERLKOTTE: Yes, Your Honor.

13 MR. BOHLING: And my position is it simply cannot  
14 be. We have never filed a civil proceeding. We probably  
15 can't because of the statute. So my position is it cannot --

16 THE COURT: -- because if I find Mr. Dwerlkotte  
17 correct, this is not a Rule 41, I mean, if I can answer that  
18 critical question, would you agree and I make a determination  
19 this isn't, and I know you're saying, well, Judge it is, then  
20 would you agree that -- and I keep saying Ground Zero. If I  
21 vacate, which I'm going to vacate. That's one thing we know.  
22 I'm going to vacate the administrative forfeiture. That will  
23 put us -- and if I don't see this as a Rule 41 hearing, that  
24 puts us at now we just have property that the government has  
25 that is Mr. Dunn, if I find that, would you agree?

1 MR. BOHLING: So there are two aspects to that  
2 question that are very different from each other. And that is  
3 can it be a Rule 41 hearing legally? That's one question that  
4 I think that they are raising. Which is an interesting  
5 question. And I think that we are into this area where this  
6 is not entirely clear. I have cited some case law and I think  
7 that we might benefit from more discussion with that issue.

8 There is another way to look at it and I think it is  
9 confusing. But I think that the question becomes not can it  
10 be, but is it? So in other words, the Court has not entered  
11 its order on the -- yet, we know and conceited that you  
12 should, vacate the administrative forfeiture.

13 THE COURT: Can I do so on the record now and I'll  
14 follow up with the Court's written judgment?

15 MR. BOHLING: I have no objection to that.

16 THE COURT: I mean, if I can do it on the record the  
17 Court will set aside and vacate the administrative forfeiture  
18 with respect to this -- the property. I mean, I can do it and  
19 follow up with a Court's order doing so. So we don't have to  
20 talk about it. All the parties agree and stipulate that the  
21 Court should vacate and set aside the previous administrative  
22 forfeiture?

23 MR. BOHLING: Yes.

24 THE COURT: Okay.

25 MR. BOHLING: Yes. I think a written order would e

1 appropriate.

2 THE COURT: Well, I'm doing oral. And now I have  
3 done that and now we are back to?

4 MR. BOHLING: Right. So then question becomes, we  
5 are sitting with \$41,000 dollars, we do not have the cars. So  
6 then what happens? In our view 983 does not answer that  
7 question. It has to be answered by some other procedure. We  
8 would agree that in the abstract that procedure would be to  
9 file a civil forfeiture complaint. But in the event our  
10 statute of limitations has run and they have indicated they  
11 are not -- and quite understandably not going to waive their  
12 statute of limitations defense. So we, I think, would agree  
13 that that is not a viable course of action for the government.  
14 So then the question becomes again we're sitting with this in  
15 our view the proper next step then is for Mr. Dunn to file a  
16 Rule 41 if he wants the property to be returned. Remember  
17 that we cannot return the cars because we do not have them.  
18 So that's not an option.

19 THE COURT: Let me ask you this, who has to initiate  
20 this, does Mr. Dunn initiate it or does the government?

21 MR. BOHLING: Mr. Dunn.

22 THE COURT: Now, for purposes of this Rule 41  
23 hearing, you want to Court to make a determination that his  
24 previous filings albeit preempted this kind of this stage we  
25 are at now because we never have set aside other than right

1 now, I need to treat his prior motions as a Rule 51 requesting  
2 property back?

3 MR. BOHLING: So I was under the impression that,  
4 that we were somewhat agreeing on that before hand. And now  
5 it's clear to me perhaps we're not agreeing.

6 THE COURT: Agreeing that?

7 MR. BOHLING: That it would be appropriate to go to  
8 the next step and have a hearing that would be one under  
9 Rule 41 for this determination. Because that is what I had  
10 said in my pleading that we were going to do. And that was  
11 based upon the fact that Mr. Dunn had filed previous Rule 41  
12 motions.

13 THE COURT: Those Rule 41 or should they loosely be  
14 interpreted as Rule 41?

15 MR. BOHLING: I certainly saw them as being fairly  
16 interpreted. I think he used the words Rule 41 at some point.

17 THE COURT: Okay.

18 MR. BOHLING: There is a lot of prior litigation  
19 here.

20 THE COURT: Okay.

21 MR. BOHLING: And I thought -- I didn't want to put  
22 him to the extra procedural step of having to refile that  
23 again given that he had already indicated his intention to do  
24 so. That was my thought about the whole thing.

25 THE COURT: Okay. Fair enough.

1 MR. BOHLING: But I don't want to speak for Mr. Dunn  
2 in terms of -- it's his choice about how he wants to proceed.  
3 My argument is and this is something I think we do want to  
4 brief for the Court, is if he doesn't do that, we're not  
5 obligated to do anything at this point. Even though you have  
6 vacated the forfeiture. Again, I have two cars I can't get  
7 back. There is a whole other piece to this that we have to  
8 get through at this point.

9 THE COURT: What if I did do that and you did have  
10 two cars? Let's say, hypothetical -- you're saying I don't  
11 have to give back. What if we had two cars, two cars and  
12 \$41,000 dollars and we are postured like we are now? In that  
13 if I interpret it and Mr. Dunn says that wasn't a Rule 41, I  
14 was asking it back, and you have property, and I set aside  
15 this administrative forfeiture, then you just have property?

16 MR. BOHLING: Right.

17 THE COURT: And that goes back to what -- then it's  
18 still Mr. Dunn's? Or whose is it?

19 MR. BOHLING: Our argument would be that Rule 41 is  
20 the proper and recognized for him to get the property.

21 THE COURT: And where we are right now is just kind  
22 of be sitting unless and until he makes a motion.

23 MR. BOHLING: My view of the law is that there is  
24 still substantive law that says that the United States  
25 property right rest at the time of the offense. So



1 notwithstanding what has happened with the forfeiture or not,  
2 that still exists. And so our position is we still have the  
3 right to say to Mr. Dunn, we believe that you do not have an  
4 equitable right to request this back. So I think he would ask  
5 for it back, we would say we think this is property involved  
6 in your offense of conviction, we don't think we should give  
7 it back. You need to file a Rule 41 and let the Court decide  
8 this. That would be our position.

9 THE COURT: What would you do otherwise with it?  
10 Say if Mr. Dunn never asked it, what would you do otherwise?  
11 Is there some statute or something that says, well, if they  
12 don't claim -- so you're almost forcing them to use the Rule.  
13 They have no other recourse other than, if that's the case  
14 then why are we -- it seems to me that you can take it, it's  
15 like a taking of someone's property.

16 MR. DWERLKOTTE: It is.

17 THE COURT: Albeit, it's taking of someone's  
18 property, albeit, there is a criminal case arguably that you  
19 suggest, well, this property is related to this criminal  
20 activity, but you have filed nothing. There is nothing out  
21 there that suggests or makes that connection where you should  
22 forfeit it based upon the crime.

23 MR. BOHLING: Right.

24 THE COURT: But because I collected it in the course  
25 of this investigation, that it is fine. Or you have taken the

1 property and now you're gonna -- they should be able to get my  
2 property back.

3 MR. BOHLING: I see the issue being a little bit  
4 more discreet than that.

5 THE COURT: No listen here. I've had cases where  
6 there is property. Albeit, it's not \$41,000 dollars and not  
7 two vehicles, but I think the premise is the same. That the  
8 law enforcement agency or whoever, the government had this  
9 property. And they requested the property back. They didn't  
10 do the Rule 41, and then I said, well, let's check with the  
11 AUSA. We don't need have. And so the Judge, what I did is  
12 issue an order that you give them their guns back. It was  
13 guns. Now, I made them sell it in six months at an auction,  
14 but the point is you have instituted nothing which to suggest  
15 that you had some right or it was forfeited. There is no  
16 action. So now is this different?

17 MR. BOHLING: It's different -- and I'm often the  
18 ones dealing with those issues even if behind the scenes.

19 THE COURT: Is it value?

20 MR. BOHLING: Part of it is value. Part of it is  
21 the fact that there was a criminal conviction for a drug  
22 conspiracy.

23 THE COURT: Well, I had a criminal conviction for  
24 these guns too. There was a conviction. So you know, felon  
25 in possession. And that's a little different, but the point

1 is I had a conviction, I had the gun, I had property.

2 MR. BOHLING: I don't recall that case in  
3 particular.

4 THE COURT: Brandwine.

5 MR. BOHLING: I think one of the differences maybe  
6 that if there are third parties that are involved then  
7 everything is different, right?

8 THE COURT: That's true.

9 MR. BOHLING: That's the issue. See that's what I'm  
10 trying to say is I think the law says notwithstanding anything  
11 else, if you're a person who like Mr. Dunn is eventually  
12 convicted of a crime, if the property is involved with the  
13 crime then you kind of lose equitable title to that at the  
14 time that you commit the offense.

15 If there were a third party here, if there were  
16 somebody else out there that I am aware of who had a good  
17 faith basis for making the claim, we would be in a completely  
18 different situation. And often are. So I think some of those  
19 differences would be explained by that.

20 THE COURT: I guess I'm having problems with when  
21 you're saying that this -- what was seized was part of the --  
22 I don't know. Has anyone made some determination to law  
23 enforcement? Because sometimes in collection of evidence, I'm  
24 collecting evidence and doing all and this is part of it.

25 MR. BOHLING: Right.

1           THE COURT: I suggest that it's part of the fruits  
2 of his criminal activity.

3           MR. BOHLING: And that was the purpose of today's  
4 hearing.

5           THE COURT: It's the assumption that it is. Unless  
6 and until Mr. Dunn files a 41 motion to suggest that it is  
7 not. Because if we are back to Ground Zero right now which we  
8 are, you have \$41,000 dollars, you don't have the vehicles,  
9 but you have \$41,000?

10          MR. BOHLING: Correct. And so we are looking at it  
11 from the other side of the coin. The other side of the coin  
12 is that we believe -- and we would present evidence to you  
13 today, of course, that would be ultimately for the Court's  
14 determination. But that \$41,000 dollars is either the  
15 proceeds of or facilitating of drug trafficking.

16          THE COURT: And that is only if the Court interprets  
17 that Mr. Dunn's previous filings were requested back under  
18 Rule 41. If he wasn't or he has not filed it, then we don't  
19 have a Rule 41 hearing, we just have the government with  
20 \$41,000?

21          MR. BOHLING: Right.

22          THE COURT: And you say I get to keep it unless  
23 Mr. Dunn files a Rule 41 to reclaim?

24          MR. BOHLING: You're right about that. But I will  
25 amend that characterization just a bit from my perspective.

1 THE COURT: Okay.

2 MR. BOHLING: In my world what I'm saying is \$41,000  
3 dollars in drug proceeds and I shouldn't be giving it back to  
4 Mr. Dunn who has been convicted of drug conspiracy that he has  
5 no equitable right to its return.

6 THE COURT: But don't you have to show it?

7 MR. BOHLING: Right. And the procedural way I can  
8 do that is by saying to Mr. Dunn you need to file a Rule 41  
9 motion.

10 THE COURT: And if he doesn't file the Rule 41 then  
11 the \$41,000 just sits indefinitely?

12 MR. BOHLING: Right.

13 THE COURT: We just wait him out and they don't do  
14 it and then it's a taking.

15 MR. BOHLING: Well, there are abandonment  
16 proceedings.

17 THE COURT: Okay.

18 MR. BOHLING: You're right. It's a fair  
19 characterization.

20 THE COURT: I appreciate it. I know this is your  
21 area, but, yeah, you're right, that other case Brandwine was a  
22 third party so that takes it off the plate.

23 MR. BOHLING: Right.

24 THE COURT: I understand what you're saying. I cut  
25 you off.

1 MR. BOHLING: No, Your Honor.

2 THE COURT: I'm trying to get to the point where I'm  
3 understanding and I think I do.

4 MR. BOHLING: It's it is very interesting  
5 discussion. I think it has been incapsulated perfectly well.  
6 And I think we cited cases that the support the position.

7 THE COURT: Mr. Dwerlkotte?

8 MR. DWERLKOTTE: On the Rule 41 point, again, I  
9 think we've gone through, we've gone through the  
10 administrative process. We know that they can't file the  
11 civil forfeiture. And we know that they did in the criminal  
12 case filed the forfeiture, but never submitted on it.

13 So the only three recognized way that they get to  
14 just keep property, they haven't done. So those three  
15 avenues.

16 THE COURT: What are those three avenues again?

17 MR. DWERLKOTTE: The administrative, which we agreed  
18 to set aside.

19 THE COURT: Right.

20 MR. DWERLKOTTE: The criminal which they included  
21 but didn't submit to the Jury. And then the civil forfeiture  
22 --

23 THE COURT: Which we agree the statute of  
24 limitations probably has run?

25 MR. DWERLKOTTE: Sure. Right.

1           THE COURT: So I just want to guide this  
2 conversation. So Mr. Bohling is saying, with that said, we  
3 can keep the money until such time that Mr. Dunn files a  
4 Rule 41. That is the procedure in which -- then we have this  
5 hearing, then the Court makes a determination to see if it's  
6 actually related and has the government met their burden.

7           MR. DWERLKOTTE: Right. And so I would say that  
8 under the Eighth Circuit law, if there's a void administrative  
9 forfeiture like in Volanty case that I cited to you early, the  
10 Court ordered one of two things. The return of the property,  
11 give it back or you institute civil proceedings.

12          THE COURT: Who institutes? They do?

13          MR. DWERLKOTTE: Right.

14          THE COURT: We already know they can't.

15          MR. DWERLKOTTE: Right. So how is that our fault?  
16 Why do we have to go file a Rule 41 motion to come back and do  
17 this all over again when they are going to say the same  
18 standard applies.

19          THE COURT: Here is the rub for me. Is it true that  
20 you can just have property that you haven't instituted a way  
21 of forfeiting because you believe it may be related to  
22 criminal activity, right? There is some nexus, therefore, we  
23 can just have it. I'm not saying that's right. I'm just  
24 saying what Mr. Bohling said, that they can just keep it  
25 indefinitely. That's what he is saying unless there is an

1 abandonment issue.

2 MR. DWERLKOTTE: I think that the statute 983 spells  
3 it out. It's very clear. If you don't do the notice right,  
4 you give the property back and then you can institute new  
5 proceedings. It doesn't say that if the government can't do  
6 any of these three ways, that Mr. Dunn has to go file the 41  
7 motion. It's offensive to due process to suggest that they  
8 haven't done anything they are supposed to do, and that now  
9 Mr. Dunn is supposed to do something that he shouldn't have to  
10 do in the first place.

11 THE COURT: I think there is the research to tell me  
12 that. And you believe you've given me the case law to support  
13 that?

14 MR. DWERLKOTTE: Yes, Your Honor. Between Volanty  
15 and the statute itself, Your Honor, I think it is pretty  
16 clear.

17 THE COURT: I've heard the evidence for the Rule 41  
18 so I'm okay there. I think my issue is if I determine that  
19 this wasn't Rule 41, because your argument Mr. Dunn requested  
20 this and that's how we have a hearing, correct? Would you  
21 agree with that?

22 MR. DWERLKOTTE: I think the proceeding is  
23 functionally the same. I think we would do the same thing in  
24 either hearing. It's just whether or not the rules of  
25 evidence are going to apply. I think the functional hearing



1 isn't going to be any different, Your Honor. And that's why  
2 we have this difference of opinion on how the proceeding would  
3 play out in terms of evidence and everything. So I think the  
4 standard is the same regardless of Rule 41 or CAFRA.

5 THE COURT: Why do you keep saying CAFRA? This is  
6 not that.

7 MR. DWERLKOTTE: I think it is governed by CAFRA  
8 because once they set that aside and they have instituted the  
9 administrative forfeiture process it therefore becomes civil  
10 forfeiture and CAFRA applies.

11 THE COURT: Okay. But I guess my point is this, I  
12 understand you treat it at least evidentiary wise, I think,  
13 the same, right? So are you conceding the fact that the prior  
14 filings by Mr. Dunn, those prior filings were requesting  
15 property back which arguably it would be Rule 41?

16 MR. DWERLKOTTE: I haven't looked at those, Your  
17 Honor, so I don't know. I can't say. I don't doubt the  
18 characterization that there were probably Rule 41 type  
19 motions.

20 THE COURT: Well, then why isn't it a Rule 41 here?  
21 That's why we are here then?

22 MR. DWERLKOTTE: Because Rule 41 isn't the  
23 appropriate -- this is very nuanced area. Rule 41 doesn't  
24 apply. Your Honor, I think it would be an issue as an issue  
25 of law. This is not an equitable circumstance for to you

1 exercise jurisdiction under Rule 41 when the law, the Eighth  
2 Circuit law, the statute tells you to order the government to  
3 either give it back or institute the proceedings.

4 THE COURT: The only way it would be equitable if I  
5 didn't set aside the administrative forfeiture and then we  
6 file Rule 41 equity that say, Judge, maybe they get to keep  
7 that stuff, but this stuff over here wasn't part of this  
8 criminal activity, therefore, we have a hearing, they have to  
9 meet their burden, that is what you're saying?

10 MR. DWERLKOTTE: Exactly.

11 THE COURT: Because the difference here is you did  
12 set it aside, Judge, therefore, we never get to 41.

13 MR. DWERLKOTTE: Exactly. I completely agree.

14 THE COURT: I'm not saying it as a fact, I'm just  
15 following your argument.

16 MR. DWERLKOTTE: No, I agree with you whole  
17 heartedly. It's that specific piece that is the linch pin  
18 there.

19 THE COURT: Okay.

20 MR. DWERLKOTTE: I think that some of the case law  
21 that Curt is talking about I think are -- again, I think those  
22 are pre-CAFRA cases that talk about this equitable idea of  
23 returning property because there was a -- you're not going to  
24 want to hear this, but there is a Circuit split. The Tenth  
25 Circuit came up with this equitable doctrine --

1 THE COURT: -- who did?

2 MR. DWERLKOTTE: The Tenth Circuit. I know you are  
3 in the Eighth Circuit.

4 THE COURT: What did the Eighth Circuit say?

5 MR. DWERLKOTTE: The Eight Circuit said, the Volanty  
6 case, says if you do it wrong, you give it back or you  
7 institute the proceedings.

8 THE COURT: And the Tenth Circuit said what again?

9 MR. DWERLKOTTE: Tenth Circuit came up with this  
10 equitable doctrine of unclean hands and said well, you're not  
11 just going to get the property right of way in the event you  
12 are convicted.

13 THE COURT: Possibly suggesting that I don't have to  
14 follow that.

15 MR. DWERLKOTTE: You definitely do not have to  
16 follow that and I would suggest that you don't.

17 THE COURT: It's persuasive though, isn't it?

18 MR. DWERLKOTTE: It is not. The Eighth Circuit has  
19 already said what you should do so it is not binding on you,  
20 Your Honor.

21 THE COURT: Is that Tenth Circuit?

22 MR. BOHLING: I did cite some Tenth Circuit cases.  
23 And Clymore is the main case that established it that is a  
24 Tenth Circuit decision.

25 THE COURT: Okay.

1 MR. BOHLING: I think there are some of the  
2 decisions in other circuits and district courts that follow  
3 it.

4 Volanty I think is not quite -- first of all, I  
5 think there is some later Eighth Circuit case law that would  
6 kind of suggest that that is not quite right, including Hall,  
7 which I cited to you. But Volanty is a case where basically  
8 they're saying file the civil forfeiture case. Which we would  
9 love to do. Believe me, I would love to file a civil  
10 forfeiture case, I can't. So Volanty is in a circumstance  
11 that does not apply with us.

12 Clymore, the Tenth Circuit case, does address our  
13 facts which is we are behind the statute of limitations. And  
14 there is a whole line of cases that address that and talk  
15 about the Rule 41 issue in that context.

16 THE COURT: Okay. Good. And what is that case  
17 again? I know you cited it in your briefing.

18 MR. BOHLING: Clymore, that's C-L-Y-M-O-R-E. And  
19 there is a Clymore 1, and a Clymore 2.

20 THE COURT: And that's Tenth Circuit?

21 MR. BOHLING: That's Tenth Circuit.

22 THE COURT: To your point why when they're saying  
23 the Eighth Circuit, hey, that's great, but we are beyond that.

24 MR. BOHLING: Right. And we cited both in what we  
25 filed yesterday, one of my initial filing that I referenced I

1 think it was Document 14 a while ago. We cited a different or  
2 newer case than what I did yesterday.

3 THE COURT: Okay.

4 MR. BOHLING: But there is a whole lot of cases that  
5 follow that reasoning.

6 THE COURT: Okay. Go ahead.

7 MR. DWERLKOTTE: Well, I would -- I think this is  
8 the important distinction, Your Honor. So I think in footnote  
9 3 of Clymore, 245 F.3d 1195, this is dealing with pre-CAFRA  
10 case. Footnote: "Congress has now expressly declared if an  
11 administrative forfeiture is judicially set aside for failure  
12 to provide adequate notice to an alleged owner, the government  
13 may commence a subsequent forfeiture proceeding as to the  
14 interest of that claimant notwithstanding the exception of any  
15 applicable statute of limitations." 983(e)(2)(a).

16 I think other exceptions apply in there why they  
17 probably couldn't, I haven't done that research. So I think  
18 that those cases are all pre-CAFRA cases. The statute  
19 983(e)(2)(a) supersedes those and controls here. Not any of  
20 those that are applying pre-CAFRA case law.

21 MR. BOHLING: I think that's an interesting point.  
22 If we all agree that I can file a civil forfeiture action  
23 tomorrow. So that's the question.

24 THE COURT: You're kind of hinting at it.

25 MR. BOHLING: Right.

1 MR. DWERLKOTTE: Well, I think there are probably  
2 other provisions.

3 THE COURT: I thought you would say, yeah, that  
4 would be great, Judge, they can't do it because the statute of  
5 limitations is over. But you are not necessarily saying that.  
6 I thought you would say that.

7 MR. DWERLKOTTE: I'm saying that the statute --

8 THE COURT: I would tell Mr. Bohling, go ahead and  
9 file it. I think your beyond your time.

10 MR. DWERLKOTTE: That's my point. The reason we had  
11 this hearing then is to come in here and we're going to do the  
12 same thing. The functional difference of which one is  
13 applying doesn't really matter.

14 I think there are two other provisions that arguably  
15 would apply that say they can't and they have to give the  
16 property back.

17 THE COURT: Okay.

18 MR. DWERLKOTTE: And they have to give it back  
19 pending them deciding whether or not to bring a civil  
20 forfeiture case. So it's not well, we'll sit around and  
21 figure it out, because that's what would then prompt us to  
22 file a Rule 41 motion.

23 THE COURT: Okay. What do you all -- I just want to  
24 be very clear too. What are you briefing me, Mr. Bohling?

25 MR. BOHLING: I would like to brief three topics.

1 One, is a brief review of the evidence on the case. Actually,  
2 I was thinking about some things over lunch. There is some  
3 very interesting evidence here that I would like to review for  
4 the Court.

5 THE COURT: Sure.

6 MR. BOHLING: Number two, is I think very  
7 interesting and I think very unsettled issue about what  
8 happens now, now that the Court has vacated the administrative  
9 forfeiture. Is it Rule 41, is this a CAFRA hearing, do we get  
10 to file a new complaint, how should that work? Because I will  
11 say honestly do this case law that it is less than clear to  
12 me. This is one of those areas of the law where it is rarely  
13 tested and I want to make sure we are doing the right thing.

14 THE COURT: Sure.

15 MR. BOHLING: But I'd like to review those cases and  
16 even took to Brent about them and make sure we are on the  
17 right page there.

18 The third issue that I think is lurking here is the  
19 one I've raised which is as to the cars. I think the law in  
20 the Eighth Circuit is clear that they cannot be ordered return  
21 and therefore it's a damages type situation and what then has  
22 to happen at that point. Because I think we're kind of off to  
23 the races on a third phase of this litigation.

24 THE COURT: And then they would have to maybe file  
25 some other type of action?

1 MR. BOHLING: Unfortunately, yes.

2 MR. DWERLKOTTE: Have to go to the federal claims  
3 court actually.

4 MR. BOHLING: And I will be perfectly honest, I've  
5 talked to agency counsel and we would be very open to -- if  
6 that's the situation, if that is what we are left with, we  
7 certainly would be open to talking with these attorneys and  
8 try to come to a resolution.

9 THE COURT: Sure. I'm sorry, Mr. Dwerlkotte.

10 MR. DWERLKOTTE: Sure. I was going to say the Rule  
11 41 part just still doesn't make any sense because they can't  
12 give us back the car. Having a hearing for them to tell us  
13 they can't give us the cars back, we already know that. So  
14 Rule 41 doesn't make sense.

15 THE COURT: Well, what would we do if I say -- what  
16 would we do if I ordered them to give what back? What would I  
17 order them?

18 MR. DWERLKOTTE: That's my point. The only thing  
19 you can do under Rule 41 is give the property back, but since  
20 they don't have the cars, you can't make that. So we would  
21 have a Rule 41 case where we can't do anything except maybe  
22 the money.

23 THE COURT: The money?

24 MR. DWERLKOTTE: Right. But regardless we would  
25 still have to do a completely different case so the Rule 41



1 hearing does nothing to help us with the cars because they  
2 have gotten rid of it.

3 MR. BOHLING: It does in a real way, Your Honor.  
4 There's a couple reasons why. One is the Rule 41, if I'm  
5 correct, and there's an equitable component to Rule 41, then I  
6 think if a court were to determine that we did not have to  
7 give the property back, you know, in theory, if we have it,  
8 that there is no equitable -- that equitably we do not have to  
9 do that, it moots out the rest of the issues.

10 The second reason is because under Hall, the Eighth  
11 Circuit case that talks about this. Hall says that Rule 41 is  
12 not a damages provision, does not waive sovereign immunity.  
13 But it also says that the filing of a Rule 41 essentially if  
14 the government then, like we have here says this stuff is  
15 gone, that then can go to the next phase of being a Federal  
16 Tort Claims Act or whatever it would be. And that's really  
17 important because there is a statute issue on their side too.  
18 So that gets rid of the statute issue. The Hall finding, the  
19 Hall case, the Rule 41 morphs into this next proceeding, it  
20 gets rid of their statute issue. So if they don't file a Rule  
21 41, they are going to have the same issue I have on my side.

22 THE COURT: Okay. If I just stop and say an order,  
23 give back the property, then that doesn't resolve this issue  
24 with the cars.

25 MR. DWERLKOTTE: We're back here right again. And

1 that's my point is regardless of if CAFRA applies or not, if  
2 Your Honor determines -- there is no way to determine this  
3 equity component. So that's why it all comes back to  
4 substantial connection, the preponderance of the evidence  
5 standard. So if you, Your Honor, determine that they haven't  
6 met their burden, then we can then go to the Court of Federal  
7 Claims and either initiate a new case or, Your Honor, what I  
8 would submit -- I haven't thought about the statute issue  
9 there, we could then have Your Honor transfer the case.

10 THE COURT: But wouldn't they give you back the  
11 \$41,000? What would you go to the Federal Tort --

12 MR. DWERLKOTTE: -- we would have to go to the  
13 Federal Claims Court over the two cars, Your Honor.

14 MR. BOHLING: The cars are worth more than \$10,000.  
15 So the jurisdiction is exclusively with the Court of Claims  
16 under the Tucker Act if that is the way they want to go.

17 THE COURT: But you're still saying you would do  
18 that under 41 or no?

19 MR. BOHLING: What I'm saying is and this is a  
20 little convoluted.

21 THE COURT: Lord.

22 MR. BOHLING: The Eighth Circuit in Hall said  
23 somebody like Mr. Dunn brings a Rule 41 action. The  
24 government says your stuff isn't here. It happens. The  
25 Eighth Circuit says, and other court's agree with this, you

1 can't be ordered to return what you don't have. So Rule 41  
2 isn't the operative thing. And Eighth Circuit says, and  
3 there's a Circuit split on this issue, but the Eighth Circuit  
4 says, and you cannot give damages directly under Rule 41.  
5 What the Eighth Circuit then went on to say is by virtue of  
6 filing the Rule 41 and discovering from the government that  
7 they don't have the stuff, the Court, the District Court can  
8 then take that Rule 41 motion and as he says essentially  
9 convert it into a damages suit. And that becomes important in  
10 cases like potentially this one where there is a statute issue  
11 on their ability to bring the civil damages suit.

12 THE COURT: Oh.

13 MR. BOHLING: Right? Because it gets -- essentially  
14 what the Court --

15 THE COURT: -- that's why you are suggesting --

16 MR. BOHLING: -- they have to do a Rule 41 if they  
17 are going to get around the statute issue.

18 THE COURT: Otherwise the statute of limitations  
19 would preclude them?

20 MR. BOHLING: Possibly. I've not researched the  
21 issue.

22 THE COURT: Possibly preclude them.

23 MR. BOHLING: I'm not saying that conclusively.

24 THE COURT: Right.

25 MR. BOHLING: It's been a long time, but there is

1 going to be an issue there. Certainly one that I would  
2 research. So I'm not saying conclusively this is an issue or  
3 I would raise it.

4 THE COURT: For them getting into if it was towed or  
5 not?

6 MR. BOHLING: Right.

7 MR. DWERLKOTTE: I wouldn't see a functional  
8 difference I guess if it was -- even to the extent it was  
9 construed as a Rule 41.

10 THE COURT: It wouldn't be too much of a --

11 MR. DWERLKOTTE: Well, why Your Honor couldn't then  
12 just transfer the case administratively pursuant to statute  
13 where they -- the Jackson case did exactly that. The District  
14 Court transferred the remaining claims under Rule 41 to the  
15 Federal Claims Court for determination of damages.

16 But I guess that is kind of my point we shouldn't  
17 have to do any of that stuff. And now we are risking a  
18 statute of limitation issue on something that we shouldn't  
19 have to bring.

20 THE COURT: Well, you would probably have some  
21 pretty good arguments with respect to the statute.

22 MR. DWERLKOTTE: Well, before we could even do that  
23 though, we would still have to have Your Honor's determination  
24 on the equity/whatever because that will be determined of all  
25 of them.

1 THE COURT: Right. Well, did you want to submit  
2 anything to the Court?

3 MR. CARPENTER: In terms of a proposed order, Your  
4 Honor?

5 THE COURT: Yes.

6 MR. CARPENTER: Yeah, we'd be happy to.

7 MR. DWERLKOTTE: Proposed order to set aside the --  
8 I can do that.

9 THE COURT: Yeah, a proposed order of all this  
10 stuff.

11 MR. DWERLKOTTE: And any other evidence to provide  
12 to Your Honor.

13 THE COURT: That would be great. And are you going  
14 to send a proposed outside of your briefing?

15 MR. BOHLING: I will be happy to do that.

16 THE COURT: That would be great. Well, I appreciate  
17 it. Longer than I thought but interesting. A lot of  
18 complexity to it. Clearly, I'm trying to sort it out.

19 MR. DWERLKOTTE: Like Curt said, it's not litigated  
20 very often, we spent a lot of time looking into this. It  
21 doesn't happen very often.

22 THE COURT: Yeah. So let's get a date so we have  
23 something on the calendar when these can be submitted.

24 MR. BOHLING: How about Wednesday of next week? Is  
25 that good?

1 MR. DWERLKOTTE: Can we do government submits and  
2 then we respond? Simultaneous briefing might be two sails  
3 crossing in the wind.

4 THE COURT: Okay. You have till next Wednesday,  
5 which is July 26th. Mr. Dwerlkotte will have it 14 days and  
6 then the reply is ten days, right?

7 MR. DWERLKOTTE: 14.

8 THE COURT: To reply? They need to change that law.

9 MR. BOHLING: Your Honor, I'm happy to do it in ten.

10 THE COURT: And then proposed judgments.

11 MR. DWERLKOTTE: Are you wanting findings of fact  
12 conclusions of law type judgment, Rule 52?

13 THE COURT: Is there any other kind? Yeah, I think  
14 that would be good in light of the everything.

15 MR. DWERLKOTTE: Can that follow the initial  
16 briefing?

17 THE COURT: You can get me back on and we can go  
18 from there? And then we can set a date.

19 MR. BOHLING: That's fine. What are you thinking  
20 Brent?

21 MR. DWERLKOTTE: Probably 14 days after that we can  
22 start the next round. Those just take a little bit of time.

23 THE COURT: Yeah. And that next round we just  
24 submit. So you're going to submit your proposed 14 days after  
25 the reply?

1 MR. BOHLING: 19th was the last day, Your Honor.

2 THE COURT: August 28th is the last day. And so 14  
3 days after that.

4 MR. DWERLKOTTE: That's fine, Your Honor. I might  
5 need a little more time, but we can probably work together.  
6 And just for the record, I love working with Curt.

7 THE COURT: Well, let's say 14 days but if you need  
8 more time, I've very open to that.

9 MR. BOHLING: Thank you, Your Honor.

10 THE COURT: We currently have the motion for hearsay  
11 that is still --

12 MR. DWERLKOTTE: That was more of a bench  
13 memo/motion in limine so. You can take under advisement.

14 THE COURT: Right.

15 MR. BOHLING: I moved on res judicata. And I'm not  
16 sure that is terribly relevant at this point but I would  
17 address that in my briefing.

18 THE COURT: I don't think you can argue that really.

19 MR. BOHLING: The only point I was making is that  
20 the existence of the conspiracy conviction. But I think  
21 within the context of the hearing it's not really an issue --  
22 I think that is understood and it's not really an issue within  
23 the fact finding. But I will address it generally in my  
24 briefing. I don't think the Court needs to decide anything  
25 right now.

1 THE COURT: Okay. Thank you all.

2 MR. DWERLKOTTE: Just to make sure the proposed  
3 findings, applicable with Rule 52. I just want to make sure  
4 I'm not missing something. Proposed findings of fact,  
5 conclusions of law, all that stuff?

6 THE COURT: Right.

7 MR. DWERLKOTTE: Just making sure.

8 THE COURT: Yes. Are we good? Anything else?

9 MR. BOHLING: No, Your Honor.

10 MR. DWERLKOTTE: No, thank you.

11 THE COURT: Okay. Thank you counsel. I really  
12 appreciate it.

13 (THEREUPON, the following proceedings were adjourned.)

14

15 CERTIFICATE

16

17 I certify that the foregoing is a correct transcript  
18 from the record of the proceedings in the above-entitled  
19 matter.

20

21 August 26, 2017

22 /s/ Denise C. Halasey  
23 Denise C. Halasey, CCR, CVR-CM  
24 United States Court Reporter

25

26